TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908

No. 104.

J. W. FORBES, THOMAS TATUM OSBORNE, JOHN T. COX ET AL., PLAINTIFFS IN ERROR,

vs.

THE STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED MARCH 18, 1908.

(21,074.)

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INDEX.

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1 In the Supreme Court of Appeals of Virginia, at Richmond.

FORBES ET ALS.
v.
STATE COUNCIL JUNIOR ORDER UNITED AMERICAN MECHANICS OF VIRGINIA.

To the Honorable the Judges of the Supreme Court of Appeals of Virginia:

Your petitioners, J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings and E. G. Williams, represent that they are aggrieved by an order or judgment entered by the Chancery Court of the City of Richmond against them on the 8th day of May, 1907, in the suit of the State Council of Virginia, Junior Order United American Mechanics of Virginia, against the National Council Junior Order United American Mechanics of the United States of North America, and others. The above named cause has been previously before this court and a copy of the record in its court, and can be referred to if necessary in this proceedings, as agreed by counsel.

The said judgment was entered in a certain proceeding for contempt had against your petitioners. A copy of said judgment is set forth in the copy of the record of said contempt proceeding herewith filed.

2 The said contempt proceeding arose out of an alleged disobedience or a violation of a final decree of the said Chancery Court in said suit, entered in said case, July 21st, 1904.

The bill of complaint in said suit alleged the existence of a corporation chartered under the laws of the State of Pennsylvania under the name of the National Council Junior Order United American Mechanics of the United States of North America, that the members of the complainant body had formerly been a subordinate branch of said organization, called the State Council of Virginia, Junior Order United American Mechanics of Virginia, that it had become dissatisfied with certain acts of said National Council, and had had itself incorporated under a charter granted by the Legislature of Virginia, by act approved February 1st, 1900, under the name of the State Council of Virginia, Junior Order United American Mechanics of Virginia, that by said charter its corporation was declared the supreme head of the Junior Order United American Mechanics in this State, with exclusive power to create subordinate bodies or councils, to make constitutions and by-laws, that the objects of the organization were "to maintain and promote the interest of Americans, to assist them in obtaining employment, to encourage them in business, to afford relief to the members thereof and their families in case of accident, sickness or death, to defray the expense of their funerals, or such other cases of distress as shall be defined by the constitution, by-laws, rules and regulations of this corporation." That on or

about March 2nd, 1901, at Alexandria, Virginia, the National Council had created a voluntary association out of certain loyal councils which had refused to become a part of the complainant organization under said legislative charter, that said voluntary association had been given and was using the same name under which the complainant had been incorporated, the same seal and the same appellations for its officers, and was holding itself out as the same State Council and was creating subordinate councils.

It claimed such acts to be violative of its charter rights, and prayed an injunction as follows:

"may be made parties defendant to this bill and required to answer the same, but an answer under oath is waived. May your honor declare the said organization, the new State Council to be illegal, and your orator's charter to be valid; may said defendants be enjoined from continuing the use of the name State Council of Virginia Junior Order United American Mechanics of the State of Virginia or any other name of like import likely to be taken for that of your orator, and from the use of the seal, and from carrying out the objects for which they were organized, and from using the
3 name of your orator, or any other name of like import, in the pursuit of any of the objects for which your orator was chartered. May said defendants under the name of your orator, or any name of like import be enjoined from granting charters to subordinate Councils, and then representing themselves to subordinate Councils as the head of the Order in this State, and from interfering in any way with the pursuit by your orator of its objects and purposes. May they be restrained from designating their officers by the appellations above set forth as those used by your orator for its officers or agents. May those already elected, as above stated, be restrained from using the aforesaid appellations, and may your honor grant such other, further and general relief as to equity may seem meet and the nature of your orator's case requires."

It is manifest from this prayer that the whole effort was to prevent the defendants from using the plaintiff's name, or a name of like import, and from doing certain acts under that name, or a name of like import. In fact it was a contest over the right to a name, and the rights included therein. That was the full scope of the bill and its prayer.

The final decree entered in said suit, for the violation of which your petitioners were fined for contempt by said order of May 8th, 1907, reads as follows:

"This cause came on this day to be heard on the bill of the plaintiff and the exhibits therewith filed, on the answer and demurrer of the National Council of the Junior Order of the United States of North America to the said bill, and the exhibits therewith filed; which answer is prayed by said defendant to be treated as a cross bill, and on the general replication to said answer, and on the separate answer of E. L. S. Bouton, James R. Mansfield, E. H. Heaton, Geo. B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott, and J. R. N. Curtain, which refer to and adopt as their own the answer

and prayer of the said National Council, all of which papers have been heretofore filed, on the general replication to said answers, on the paper marked "Agreed Facts," and the documentary evidence therein mentioned and referred to on the paper marked "Additional Facts Filed at Bar," and the documentary evidence, and the act of the General Assembly therein mentioned and referred to, all this day filed, and was argued by counsel.

"On consideration whereof, the court doth adjudge, order and decree that said demurrer be, and the same is hereby, over-
4 ruled, and that the prayers of said answers, treated as cross bills, be, and the same are hereby, denied; and the court being of the opinion that the act of the General Assembly of Virginia, passed on the 17th day of February, 1900, and entitled an act to incorporate the State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia, is a constitutional and valid act, doth so declare, and doth adjudge, order and decree that the plaintiff in this suit, by its corporate name of the State Council of Virginia Junior Order of the United American Mechanics of the State of Virginia, is the supreme head of the Junior Order of the United American Mechanics in the State of Virginia, and in said State of Virginia shall have the power to make such constitutions, laws, by-laws, rules and regulations as shall be necessary for its government, and shall have, in the State of Virginia, full and exclusive authority and jurisdiction to grant charters to subordinate Councils, Junior Order United American Mechanics in the State of Virginia, with power to revoke the same for cause and to make such constitutions, by-laws and rules of order as it may deem just and proper for the government of subordinate Councils; and that its officers shall be such as it may deem necessary, and shall be elected at such times and places, and in such manner as its rules and by-laws may prescribe.

"And the court doth further adjudge, order and decree that the said National Council of Junior Order United American Mechanics of the United States of North America, and the other defendants to said bill, to-wit: E. L. S. Boulton, James R. Mansfield, E. H. Heaton, Geo. B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott and J. R. N. Curtain, who, as shown by their answers, are the agents and representatives of the said National Council of the Junior Order of United American Mechanics of the United States of North America, a Pennsylvania corporation, and their successors, as officers of the voluntary association, mentioned and referred to in the bill of plaintiff as having been organized in the City of Alexandria, in the State of Virginia, on or about the 2nd day of March, 1901, with the same name as that of the plaintiff, who by agreement of counsel, contained in stipulation 29 of the "Agreed Facts," are made defendants to this suit, and all others who are made defendants to this suit under the general description of parties unknown, be and they are hereby, jointly, and severally, perpetually enjoined and restrained from continuing the use within the State of Virginia of the name of the State Council of Virginia, Junior Order United American Mechan-
5 ics of the State of Virginia, or any other name of like import likely to be taken for that of the plaintiff, and from the use

of the seal of said plaintiff within the State of Virginia; and from carrying out within the State of Virginia, under the name of the plaintiff, or any name of like import, any of the objects for which the said National Council of the Junior Order of United American Mechanics of the United States of North America, or the said voluntary association organized on or about March 2nd, 1901, as aforesaid were organized; and from using within the State of Virginia the name of the said plaintiff or any other name of like import in the pursuit of the objects for which the said plaintiff was chartered; and that all and any of the said defendants, under the name of plaintiff, or any other name of like import, be enjoined from granting charters to subordinate Councils within the State of Virginia, and from representing themselves to subordinate Councils within the State of Virginia as the head of the said Order in the State of Virginia, and from interfering within the said State of Virginia, in any way with the pursuit of the said plaintiff of its objects and purposes within the State of Virginia; and that the said National Council of the Junior Order of United American Mechanics of the United States of North America, and the said voluntary association organized on or about March 2nd, 1901, as aforesaid, and their agents and officers be, and they are hereby, perpetually enjoined and restrained from designating their officers within the State of Virginia by the appellations set forth in the bill used by the plaintiff for its officers and agents, and from continuing the use within the State of Virginia of said appellations."

As it was manifest from the prayer, what the contest was, so it is evident from the injunction that the relief granted was to restrain the defendants from using the name of the plaintiff or a name of like import, and from doing certain acts *under that name or a name of like import.* It was never intended even as originally drawn to have any other scope. The plaintiff could — *no* monopoly as to the objects, but only as to the name.

From that decree an appeal was taken to this court. In its opinion this court announced as follows:

"The charter is *prospective* in its operation. It does not undertake, as we construe it, to deal with vested rights. It interferes with no right of property. It *leaves the whole order of things as it existed* with respect to the society known as the Junior Order United American Mechanics unaffected, and *all rights of persons and property* which had been acquired under that organization *undisturbed and unaffected, except* that it declares that the corporation created by the act shall have full and exclusive authority and jurisdiction to grant charters to subordinate Councils in the State of Virginia."

"We do not understand the decree complained of to interfere with any vested right of person or property, but in order to put the matter beyond the reach of controversy we shall so *amend* the decree as to provide that nothing therein contained shall in any wise affect any such right as may be accrued prior to the 17th of February, 1900; and as amended the decree complained of is affirmed."

And in its order this court decreed as follows:

"This cause, which is pending in this court at its place of session at Richmond, having been fully heard but not determined at said place of session, this day came here the parties, by counsel, and the court having maturely considered the transcript of the record of *of* the decree aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that the decree appealed from should be and is *hereby amended* so as to provide that nothing therein contained shall, *in any wise*, interfere with any personal or property rights which may have accrued prior to the 17th day of February, 1900.

"And it is further ordered, *that with this amendment*, the decree complained of be affirmed, and that the appellee, as substantially prevailing, recover of the appellants thirty dollars damages and its costs by it in this behalf herein expended."

This decree was afterwards confirmed by a decree of the Supreme Court of the United States.

Thereupon the voluntary association known as the State Council of Virginia, Junior Order United American Mechanics of Virginia, which had been enjoined from using that name, "or any other name of like import likely to be taken for that" of the complainant, met and by resolution disbanded, and returned to the National Council the association charter creating it as a State Council. See answer of your petitioners.

Those persons then present, representing the subordinate Councils, which were loyal to the National Council, had a meeting and resolved to seek for a charter from the proper authorities of Virginia under a name which would not be objectionable to or in violation of the terms of said decree. They considered asking for the name of the "Virginia Branch of the National Council of the Junior Order United American Mechanics." They deemed that as clearly distinguishable from that of the "State Council of Virginia, Junior
7 Order United American Mechanics of Virginia." But they appointed a committee to consult counsel as to obtaining a charter, with power to select such name as would not be violative of said decree.

The committee consulted counsel, as directed. At that consultation it was determined to ask for a charter under a name, which was thought to be still more distinctive. The name selected was the "Virginia Branch of the Junior Order United Americans."

Three of your petitioners, J. W. Forbes, Thomas Tatum Osborne and John T. Cox, presented a petition for a charter under the name of the "Virginia Branch of the Junior Order United Americans." The requirements of section 1105*d*, of the Code of Virginia were duly followed. The judge of the Corporation Court of Norfolk City, having duly certified said petition, it was presented to the clerk of the Corporation Commission.

Upon such presentation by the counsel of your petitioners he was informed by the said clerk that Mr. Davis Bottom, a prominent member of the said State Council of the Junior Order United American Mechanics had asked that if any petition for a charter by your

petitioners be presented, that he be notified, so that he could see the same before it should be granted. He was so informed.

A few days afterwards the counsel of your petitioners requested the president of said Commission to pass upon said petition. Thereupon he was informed that the Commission desired that the counsel of the State Council be notified, and requested to agree upon some day when the Commission could hear objection to the granting of said charter. Your petitioner's counsel, so notified the counsel of said State Council, who stated that he would determine in a few days whether he would so appear or not. A few days afterwards the said counsel informed your petitioner's counsel, that he had determined not to appear before the Corporation Commission, but would pursue his remedy in the courts. The Corporation Commission were so informed, and at its request it was furnished with a copy of the record in said suit in the Supreme Court of the United States, and a copy of the opinion of said court.

A few days afterwards, upon December 29th, 1906, the charter was granted upon said petition. A copy of said charter is a part of the record accompanying this petition.

On February 18th, 1907, certain members of said State Council, among them the said Davis Bottom, presented the said Chancery Court a petition, in which they prayed that your petitioners, "be summoned and punished for their contempt in disregarding and disobeying the aforesaid decree of this court," &c.

Said petitioner set forth in its petition the substance of the
8 former suit, and said final decree in full. It then alleged that the old voluntary association, known as the "State Council, &c.," had passed a resolution that it take steps to have itself incorporated under the name of the Virginia Branch of the National Organization of the Junior Order United American Mechanics. That acting under said resolution the charter granted by the Corporation Commission had been applied for and obtained.

That after said charter had been obtained the organization accepted the charter and declared its reliance and affiliation with the said National Council, Junior Order United American Mechanics, and was acting under its control.

That said organization had granted charters to subordinate Councils—encouraged them to act in a policy of adherence to the said National Council.

They then alleged that their organization is popularly known and spoken of as "Junior Order," that the organization of your petitioners is a mere continuance of the voluntary association known as the State Council, &c., under the control of the National Council, and is in defiance of said final decree, and an evasion of the same.

They then allege that your petitioners organized and chose the same appellations for its officers as their organization used. That they had been informed that your petitioners have directly or indirectly been disobeying said final decree, that under a name of like import to theirs they have been attempting to carry out the objects of the National Council and said voluntary association—in granting charters to subordinate councils—in representing in disobedience

of said final decree themselves, as subordinate to and under the control of the National Council, and have interfered with them in their pursuit of the objects for which they were chartered.

That your petitioners had caused to be circulated a certain printed circular, filed as an exhibit with said petition.

In fact, that circular proves to be untrue, the charges in the petition that the old Alexandria voluntary association had not been "disbanded"—that the charter now complained of was obtained by said voluntary association. It shows that it was obtained at the desire of the *independent loyal subordinate councils*.

It showe no effort to interfere with the said State Council in any improper way, or in any manner covered by said final decree. There had been evidently dealings between the State Council and loyal subordinate councils for the purpose of seeing whether the split could not be healed, and all parties come together under the National organization. Surely such was a proper and praise-worthy effort.

No chancellor could have intended his decree to prevent such
9 a result. It is manifest from the decree that all the Chancellor enjoined was any act of carrying on the work under the name of the State Council of Virginia, Junior Order United American Mechanics, or a name of like import. It was a suit like a suit against the improper use of trade mark—and intended to prevent anything like a misleading of the public. But it never intended to say that the parties should not try to get together; as was the entire scope and purpose of said circular letter.

Its spirit is seen in the next to its last paragraph: "Brothers, we earnestly request that you give this matter serious consideration, and see if there is not some way that we can become one united order in Virginia, and all loyal to the National Council."

The petition then alleges "that the acts and doings of the persons hereinbefore named are in evasion, violation and contempt of the aforesaid decree of this court." It then prays that your petitioners be summoned and punished for their contempt.

Said petition was sworn to by Davis Bottom and others.

Upon said petition a rule was issued, February 20th, 1907, against your petitioners, summoning them to show cause why they should not be "fined and imprisoned for a contempt of this court in disobeying, disregarding and evading the decree of this court rendered on the 21st day of July, 1904, as affirmed by the Supreme Court of Appeals of Virginia," &c.

Your petitioners filed their answers to said petition and rule.

They admitted the statement of the previous litigation, but quoted from said decree of July 21st, and asked attention to its language.

They denied that any act in obtaining the charter from the Corporation Commission had been done "as officers of the voluntary association," known as the Alexandria Association, but as individuals, after the said Alexandria Association had been disbanded.

They denied each and every allegation as to the Alexandria Association having passed any resolution or having appointed a committee to obtain a charter from the Corporation Commission or that

any agent of the National Council was present, co-operating and advising such action.

They then set forth in full the only resolution adopted at said meeting *at* the Alexandria Association. Said resolution sets forth the previous litigations, its course through the several courts, the effects of the decrees of the courts, and then declared that for those reasons the charter from the National Council to the Alexandria voluntary association be returned to the National Council. That after the adoption of said resolution the said Association adjourned.

It then sets forth that after said adjournment, those present discussed the advisability of asking for a charter from the Corporation Commission, and appointed a committee from their number to take proper steps looking to that purpose.

It set forth the meeting had afterwards with counsel as to what course to pursue—that they determined to ask for a charter under the name of the "Virginia Branch of the Junior Order United Americans" as one not of "like import"—that is, one not likely to deceive any sensible man.

That a petition for a charter was presented under that name, that its objects were set forth in said charter, that those objects were manifestly different from those set forth in the charter to the Virginia Councils, that while their objects embraced the general indefinite objects in the charter of the Virginia Council—objects which any one could advocate, yet at the same time it set forth certain specific and definite objects not contained in the charter of the Virginia State Council, viz.: to shield Americans "from the distressing effects of foreign competition," "to maintain the public school system of the State of Virginia and of the United States," "to prevent sectarian influence with said public school system," and "to uphold the reading of the Bible in said schools."

The answer then sets forth, and accompanied the same with an affidavit from its counsel, how the parties asking for the rule had had notice of the application for the charter, how they had been notified to appear before the Corporation Commission to show any objection to the same, but had refused, and how the Commission after considering the decree of the said Chancery Court of July 21st, 1904, had declared that the charter should be granted.

Your petitioners insisted that they had taken every step possible, every step known to the law, by which they could avoid violating the said decree.

Your petitioners further insisted in their answer that under section 154 of the Constitution, the creating of the corporations and amendments of charters was lodged solely in the Corporation Commission—That section 156, of said Constitution is declared "the department of Government through which shall be issued all charters and amendments," "subject to the requirements, rules and regulations as may be prescribed by law."

They also cited section 1105 (*d*), clauses 2 and 3, Code 1904, declaring when the Corporation Commission should grant a charter to a fraternal organization. That by that statute it is required that the Corporation Commission ascertain and declare among other

things, that the name asked for is such "as to distinguish it from any other corporation chartered for similar purposes."

11 They insist that the Corporation Commission alone had the right to determine whether the name given was such as to "distinguish it from any other name of an existing corporation." That as the Corporation Commission had declared it did not infringe upon the right of any other corporation, that decision was final and binding unless proper steps be taken to test that decision.

They then called attention to the fact that the original bill was brought solely to prohibit the use of the name of the "State Council of Virginia, Junior Order United American Mechanics of Virginia," or a "name of like import," and to prevent certain things from being done under that name or a "name of like import."

It denied that it had declared its alliance or affiliation with the National Council, or that it was under its control or supremacy; that they were separate corporations.

It was admitted that the corporation was formed by those who belonged to the loyal subordinate councils, and was created as a means by which they could act together and have an intermediary through which they could have intercourse with the National Council. See last paragraph in circular filed with bill.

They admitted that the new organization had created subordinate councils, but that they were subordinate councils of their own Order, and did not pretend them to be from the State Council of Virginia, Junior Order United American Mechanics, that they had never encouraged such subordinate councils to recognize the National Council as their supreme head.

They deny any right in the State Council to object to their using the "Junior Order" in their name, and insist that the use of those words in their name does not make it a "name of like import."

Your petitioners further answered that in using the same appellations they had not violated said decree, because said decree never meant that no association should ever use such appellations, but they should not be used by any association, or incorporation having the name of the State Council of Virginia, Junior Order United American Mechanics, or having a name of like import.

That as your petitioners were not using that name, or a "name of like import," they had not violated either the spirit or the letter of said decree.

They further answered that said decree never enjoined any one from organizing and existing for the purpose of carrying out the objects for which the State Council of Virginia was chartered, but only from carrying them out under said name or a name of like import.

They also insisted that if the Act of Assembly is to be con-

12 strued as giving to the State Council of Virginia, &c., the sole right or a monopoly to advocate said objects, then the said act would be violative of the 14th Amendment to the United States Constitution, which reads, "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States," and which further declares, "Nor shall any State de-

prive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." And they further insisted that if such was the meaning of said act, it would be violative of Article 1, section 1, of the Bill of Rights of Virginia, which is quoted in said answer of your petitioners.

They here again insist upon those positions.

And they here further insist that if the said act was intended to prevent your petitioners and the other members of the said loyal subordinate councils from having intercourse or communication in all reasonable ways with the National Council in Pennsylvania it also therein violates said portions of said 14th Amendment to the Constitution of the United States above quoted. *Allgeyer v. Louisiana*, 165 U. S. 578.

They denied all intent to violate said decree, and insisted that in no respect had they violated the same. The answer was sworn to.

Before the hearing an affidavit was made by Mr. Davis Bottom, containing certain alleged resolutions, which he affirmed had been given to him as copies of resolutions said to have been adopted by said Alexandria voluntary association. He did not state from whom he obtained said alleged copies. A counter affidavit by four of your petitioners and by Judge B. D. White, of Norfolk, who was present at said meeting, was filed, denying that any such resolutions were offered or adopted.

The above was all the testimony before the judge of the Chancery Court upon the *hearing* upon said rule. On May 8th, the judge entered the order, holding each of your petitioners to be in contempt, and fining them $20.00 each, and made said fines payable to the clerk of said court in 35 days from that date, and if not paid at that time that each of your petitioners should stand committed to the custody of the sheriff of Richmond to remain in jail until said sums be paid by them respectively.

The said order after stating the proceedings upon the rule, declared each of your petitioners to be in contempt as having "disregarded and disobeyed the decree of this court, entered on the 21st day of July, 1904, &c., in the following respects."

It then sets forth six particulars in which it claims disobedience.

13 1st. "In disobeying the requirements of the act of the General Assembly of Virginia, passed on February 17th, 1900, the constitutionality and validity whereof is adjudged by the decree of this court on the 21st day of July, 1904."

2nd. "In disobeying the decree of this court in declaring and adjudging that the plaintiff by its corporate name of the State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, is the supreme head of the Junior Order of the United American Mechanics in the State of Virginia, and in said State of Virginia has power to make constitutions, laws, by-laws, and rules and regulations as shall be necessary for its government, and shall have in the State of Virginia full and exclusive authority, and jurisdiction to grant charters to subordinate councils, Junior Order United American Mechanics in the State of Virginia, with power to revoke

the same for cause, and to make such constitutions, by-laws and rules or orders as it may deem just and proper for the government of subordinate councils, and that its officers shall be such as it may deem necessary, and shall be elected at such times and places and in such manner as its rules and by-laws may prescribe."

3rd. Also "in disobeying so much of said decree as adjudged and ordered that the National Council of the Junior Order United American Mechanics of the United States of North America and the other defendants to said suit should be, jointly and severally, enjoined from continuing the use within the State of Virginia of the name "State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia," or any other name of like import likely to be taken for that of the plaintiff."

4th. "In disobeying so much of said decree as enjoined the carrying out within the State of Virginia under the name of the plaintiff, or any other name of like import, any of the objects for which the National Council of the Junior Order of American Mechanics of the United States of North America, or the said voluntary association was organized."

5th. Or "in using in Virginia the name of the plaintiff, or any other name of like import, in the pursuit of the objects for which the said plaintiff was chartered, and under the name of the plaintiff, or any other name of like import, granting charters to subordinate councils in Virginia, and representing themselves to subordinate councils in Virginia as head of said order in Virginia; and in-
14 terfering in Virginia in any way with the pursuit of the plaintiff of its objects and purposes within the State of Virginia."

6th. "In disobeying so much of said decree as prohibited the National Council and the voluntary association, their agents and officers, from designating their officers in the State of Virginia by the appellations set forth in the plaintiff's bill for its officers and agents, and continuing the use in the State of Virginia of said appellations."

Your petitioners insist that the said judgment, imposing said punishment is both erroneous and void, and they pray for a writ of error and supersedeas to the same.

The proceeding in which said judgment was entered being for a contempt of court, the first question to be discussed is the right and power of this court to give relief.

It is true that it has been frequently stated, that an order of court in a contempt proceeding is a finality, not subject to review by any higher court. Even if, in the earlier days, in which that principle was first announced, it was true in the broad sense in which it was announced, yet a slight examination of the statutes of the several States, and the decisions of the highest courts of most of the States, will show that such a rule of law is now virtually repudiated.

It has been truly said that "an examination of authorities discloses a decided tendency, independent of statutory enactment, towards an extension of the privilege of appeal and writ of error." "Contempt," 4 Ency. Plead. and Prac. p. 811.

In *Hurley v. Commonwealth*, 188 Mass. 443, it is said, "But in many of the States statutes have been passed, which have been con-

strued to authorize appeals or writs of error in proceedings for contempt, and the tendency of judicial decision in recent years has been to open for revision rulings on questions of law in this class of cases as well as in others."

The Supreme Court of Missouri, in *State v. Bland* 88 So. W., 28, stating the same view more strongly said:

"It will be found, also, that where no statutory right of appeal exists, or writ of error lies, appellate courts have been astute and diligent in granting relief by inspecting records under writs of certiorari or *habeas corpus*."

15 The doctrine that contempt orders are not subject to review by the higher courts could not have a hold upon one's judgment. It "would have a tendency rather to detract from than add to the respect and confidence reposed in the courts." See *Fishback v. State*, 131 Ind. 304-315. Hence the many efforts to get away from it.

In no court has this effort been more marked than in the Supreme Court of the United States after the early case of *Ex parte Kearney*, 7 Wheat. 38. This effort is seen through those of *Ex parte Paschal*, 10 Wall. 483, 491; *Ex parte Lange*, 18 Wall 163, 176; *Ex parte Fisk*, 113 U. S. 713; *Bullock, &c., Co., v. Westinghouse, &c., Co.*, 63 C. C. A. 607; *Counselman v. Hitchcock*, 142 U. S. 547, up to its latest expression in *Bessette v. W. B. Conkey Company*, 194 U. S 324, to which last case we ask special attention.

In *Worden v. Searls*, 121 U. S. 14-25, where *the fines are ordered to be paid to the other party*, the orders were reversed upon appeal upon the grounds that that was a *civil* proceeding, and the court had jurisdiction in such cases. It noticed *Ex parte Kearney*, a criminal contempt, and said that in that case, "The application was denied on the ground that this court had no appellate jurisdiction in a criminal case."

In *Bassette v. Conkey Company, supra*, noticing the right of appeal given to the U. S. Circuit Courts of Appeals in criminal cases, and considering and commenting upon its former decisions, it says as follows:

"The thought underlying the denial of this court of the right of review by writ of error or appeal has not been that there was something in contempt proceedings, which rendered them not properly open to review, but that they were of a criminal nature, and no provision had been made for a review of criminal cases. This was true in England as here."

Then noticing that a right to a writ of error had been authorized in criminal cases, it declares that its previous decisions are no longer binding, and says:

"As therefore, the ground, upon which a review by this court of a final decision in contempt cases was denied, no longer exists, the decisions themselves cease to have controlling authority."

We submit that the Supreme Court in the above decision pointed out the salient fact of jurisdiction, which controlled the early English cases, and which the American courts in following the English decisions, failed to notice or give due weight, viz., the want of jurisdiction in criminal cases.

This lack of jurisdiction was noticed in *Ex parte Kearney*,
16 the first decision by the U. S. Supreme Court, and fully commented upon, and also in *Ex parte Crosby*, 3 Wilson, 188, 199, upon which the decision in *Ex parte Kearney* was based. It is also worth remembering that the other ground, upon which *ex parte Crosby* was decided, was that Parliament had supreme judicial power subject to no supervision.

Its disbelief in the doctrine, as announced in that first case, is seen in the other cases above cited, where it avoided the result by issuing writs of *habeas corpus*, supplemented by writs of *certiorari*.

And now even in England the doctrine is not held to, where it can be avoided. And where the courts of that country still uphold that doctrine, it is upon the ground that the court is without jurisdiction as a court of appeals. See 10 Jurist. N. S. on p. 975, 117. E. C. L., p. 307.

On the other hand see *Ex parte Sandan*, 1 De. Gex. Bank Rpts., where Lord Lyndhurst said in a contempt proceeding: "In all criminal cases it is necessary that there should be a charge, a finding and a conviction, as a foundation for the sentence. Everything should be strictly and accurately pursued, and if in any one of those three points a substantial defect should appear, it would be a ground for reversing the proceeding. The question, therefore will be whether there is in this case a sufficient adjudication."

In *Witt v. Corcoran*, 2 Chan. Div. 69, the order was: "That the court being of opinion that the defendant B. Corcoran, has committed a breach of said injunction, and the plaintiff by counsel not pressing to commit the said defendant, this court does not think fit to make any order on the said motion, except that the defendant do pay to the plaintiff C. P. Witt his cost of this application," &c. The party appealed.

The court said: "The defendant says he has been guilty of nothing, and if the court had been of that opinion, it could not have ordered him to pay the costs of the suit. The court has made an adjudication, and, as a consequence of that adjudication, has ordered the defendant to pay the costs. If the court had thought that no contempt had been committed, it could not have ordered the defendants to pay the costs. The defendant must have a right to appeal against the adjudication." *In Re Pollard*, L. R. 2 Privy Coun. Appeals, 106-120, where an attorney appealed from a punishment for contempt of court, in its presence and depending upon the oral and contradictory testimony, it was decided, "that in their judgment no person should be punished for contempt of court, which is a criminal offense, unless the spe-
17 cific offense charged against him be distinctly stated, and an opportunity of answering it be given to him, &c., their Lordships further report to your Majesty that on the proceedings before them, it appears that Mr. Pollard has received one sentence as for six several offences in the judgment pronounced by the Chief Justice, their Lordships are not satisfied that each one would be a contempt of court, or was legally an offence.

For these reasons they recommended reversal; which was ordered."

In *Republic of, &c., v. Eulargee*, 36 L. Times (N. S.) 332, was an

appeal from the order of the Vice-Chancellor, holding an attorney in contempt. The court examined into the matter and held that the act was not an act of contempt.

While this State has from its earliest existence recognized the necessity for the power in courts to punish for contempt yet from the same earliest period it has given and recognized the right of appeal.

In the earliest general statute, declaring the power of the courts to punish for contempts, it only declared that after the party had been duly summoned and fined, "the party offending shall not again be heard in the *same* court to show cause against it. Acts 1812-13, Chap. 20, p. 25.

The next year Stokey's case, 1 Va. Cases, 330, came before the general court on a writ of error from a judgment of county court fining the appellant for a contempt. The general court held that

"A writ of error from a superior court lies to a judgment of a county court imposing a fine for a contempt of said county court."

The act of Feb. 18, 1826. Act 1826, p. 20-21 not only required the lower court to sign all proper bills of exceptions, but declared:

"Error apparent on the record in any judgment for contempt, rendered by a court other than the Court of Appeals, or in the proceedings on which such judgment is rendered, may be corrected by writ of error."

It even provided for writs of error to a judgment of the general court. Thus we see how early was the doctrine of finality of the order denied by statute in this State.

The only exception made was as follows: "Nothing in this act contained, shall be construed to extend to *any proceeding by attachment* to compel the performance of any decree or judgment, or to enforce obedience thereto."

Such was still the statutory declaration until the adoption of the Code of 1849. See Acts 1847-48, Chap. 24, Sec. 5-6, p. 159-60.

In the Code of 1849, the statute was changed to read as follows:

"To a judgment against a free person for a contempt of court, other than for the non-performance of, or disobedience to a
18 judgment, decree or order, a writ of error shall lie, when the judgment is of." &c. It then allows such writs to be issued by the several courts to the one "below it in grade."

That language has remained to this day except to leave out the words "against a free person," and to make it lie in all cases to this court. See Code 1904, Sec. 4053. Hence the only question as to jurisdiction is, what is the scope of that exception.

It is evident that under the language of the exception in the statutes from 1826 to the Code of 1849, which reads:

"Nothing in this act contained, shall be construed to extend to any proceeding *by attachment* to compel the performance of any decree, or to compel obedience thereto," the writ of error would lie in this case. Here is no "proceeding by attachment." The cases intended to be embraced in that exception were evidently cases in a pending suit, where the party refused to comply with or perform a decree by, refusing to surrender the property, &c., covered by the decree. It was intended to be coercive, or remedial, not punitive.

Hence the issue resolves itself into the question whether by changing that language into that of the statute, as now framed, the legislature intended to broaden the exception.

The exception now reads:

"To a judgment for a contempt of court, other than for the non-performance of, or disobedience to, a judgment, decree or order, a writ of error shall lie to the Supreme Court of Appeals." Code 1904, Sec. 4053.

We submit that, by such change in the language, it was not intended to embrace any other class of cases, but only to recognize that there had been a change in the method of procedure, it being no longer "by attachment."

Fortunately, this is no longer a disputed question. The language of the earlier act, and the effect of the change of phraseology in the latter statute was passed upon by this court in *Wells v. Commonwealth*, 21 Grat. 500. In that case it was held, that the present language embraces no case not included in the exception as expressed in the earlier statute.

In *Wells v. Commonwealth*, 21 Grat. 500, it appears that a decree was obtained in the Circuit Court of Bedford against one Nance for moneys which he owed as guardian—that under a decree of sale, his lands were sold, and one McCabe became the purchaser. In the meantime Nance had gone into bankruptcy. After said sale Nance, through his counsel, H. H. Wells, filed petition in the bank-
19 ruptcy court, praying that liens on his property be adjusted, also that the commissioners of sale of the Bedford Court, and the creditors be enjoined from seeking to enforce the said sale, and be required to settle their claims in said bankrupt court. An injunction was granted. Both Nance and Wells were summoned by rule from said Bedford Court to show cause why they should not be fined for contempt in so proceeding. Nance was fined $50.00 for the use of the Commonwealth, and imprisoned ten days. He was also ordered to pay costs, and dismiss his petition and injunction. Wells was fined $50.00 for the use of the Commonwealth. Wells obtained a writ of error from this court.

The first question, which was raised, was as to the power of this court to grant a writ of error in such case.

It was contended that no such power resided in this court, because the contempt was as to the disobedience of an order of said Bedford Court.

This court recognized the general principle as to the right of a court to fine for contempt.

The court then says:

"The fourth section of the act of Assembly, approved January 14th, 1871 (See Acts of 1870-1, p. 31, Chap. 34,) which is copied from the Code (1860), omitting the words "against a free person," and adopting it to the present organization of the courts, Code, chap. 209, sec. 4, p. 840, gives the writ of error in cases of contempt, with certain exceptions. It is in these words, "To a judgment for a contempt of court, other than for the non-performance of or disobedience to a judgment, decree or order, a writ of error shall lie, when the

judgment of a Circuit, or a Corporation, or a Hustings Court, from the Court of Appeals." Is the judgment for contempt in this case, "for the non-performance of, or disobedience, to, a judgment, decree, or order," in the sense in which these terms are used in this section? To all other judgments for contempt a writ of error will lie. Chap. 194, sec. 24, of the Code of 1860, p. 801, describes the cases in which contempts may be punished summarily. If this case, is so punishable, it must fall within the fourth class of cases therein described; to-wit; disobedience or resistance of an officer of the court, juror, witness or *other* person, to any lawful process, judgment decree or order of the said court. This language is made more comprehensive than the language in the act before cited. The language there, it seems to me, embraces only such judgments for contempt as are designed to enforce performance, or disobedience, and not to punish for an offense; such process as courts of equity employ to enforce their decrees, &c. It embraces *only* such as were excluded from the operation of the writ of error, by the 9th section of Chapt. 24, of the Acts of Assembly of 1847-8, by the words "any proceeding by attachment to compel the performance of any decree or judgment, or to enforce obedience thereto." Acts of Assembly of 1847-8, p. 160. To all other judgments for contempt a writ of error will lie. And the judgment for contempt complained of in this case, not being to compel the performance of, or obedience to a decree, &c., but to punish for an offense, the writ of error will lie."

This court in that case clearly recognized that the exception in the statute was not intended to apply to criminal contempts, but only to civil contempts—not to be cases where the order of contempt would be "*punitive* but coercive." That is, to cases where the party "stands committed until he complies with the order." This is seen from the language of the earlier statute, which spoke of the "proceeding by attachment." Those words show that personal restraint of the party was expected to make him comply with the order. They were never intended to apply to cases of criminal contempt, where a mere fine is imposed.

In other words the object and character of this exception is seen when recognizing the distinction between civil and criminal contempt. This distinction is very clearly stated in *Snow v. Snow*, 43 Pac. 620-21-23, where it is said, "where the contempt is such that it results in a violation of the rights of the public or the rights of an individual, which have been adjudicated and fixed by the court, and a punishment is imposed in the interest of public justice, and not in the interest of any individual litigant as a money indemnity, the offense is necessarily of a public or criminal nature, and is clearly covered and made punishable by our statutes as a public offense and the proceeds, when collected, go into the public treasury, and not for the benefit of the party injured.

"If the contempt consists in the refusal of a party to do something for the benefit or advantage of the opposite party, which is ordered to be done, the process is civil, and he stands committed until he complies with the order. The order in such case is not punitive, but coercive.

"If on the other hand the contempt consists in the doing of a forbidden act injurious to the opposite party, the process is criminal and conviction is followed by a penalty of fine and imprisonment, or both, which is purely punitive. In the former case the private party alone is interested in the enforcement of the order; and the moment he is satisfied, the imprisonment terminates. In the
21 latter case the State alone is interested in the enforcement of the penalty.

"It is true the private party receives an incidental advantage from the infliction of the penalty, but it is the same sort of advantage precisely, which accrues to the prosecuting witness in a case of assault and battery, the advantage being that the punishment operates *in terrorem*, and by that means has a tendency to prevent a repetition of the offence."

In that case are cited 125 Ill. 307, 37 N. E. 1004, 49 Me. 392, 24 W. Va. 279, 114 Mass. 238, 30 N. E. 1038.

This distinction is clearly recognized *In Re Christenson Eng. Co.*, 194 U. S. 458, reaffirming *Bessette v. W. B. Conkey Company*, 194 U. S. 324, where a writ of error was allowed.

Thus we have a unanimous decision of this court, in construing the present law as found in section 4053, Code 1904, holding that a writ of error lies from a judgment or decree like the one in this case. The Wells case was a much stronger case to come within the exception of the statute than this case. In that case the original suit was a pending suit, the declared effort was to prevent the enforcement of the decree, to prevent the delivery of property. Here the decree had been complied with, for the Alexandria Association had been disbanded. Here no property was withheld. Here no injury was alleged to have been inflicted upon the plaintiff. All that could be alleged, all that was alleged, was that the dignity and authority of the court had been ignored and treated with contempt, in getting out the charter as the Va. Branch of the Junior Order United Americans.

The charter was obtained by men who were neither officers or agents of the National Council, nor of the Alexandria State Association, who alone had been specifically enjoined by the injunction. See the injunction order.

If anything, it was a defiance by outside parties of a decree of said court. *If a contempt at all*, it was criminal contempt in disregard of the court's authority. *New Orleans v. Steamship Co.*, 20 Wall. 387-392. Here your petitoners were "fined" for contempt. "But a fine for contempt is a punishment for a wrong to the State, and goes to the State." *In re Rhodes*, 65 N. Car. 518. No damages were allowed the plaintiff, for none were proven. It was treated as an offence against the Commonwealth; and, as in the Wells case, the fine was made payable to the Commonwealth. In the Wells case, Nance was ordered to have the injunction proceedings dismissed. Here no requirement was made of your petitioners. They were merely fined for a certain course of conduct in alleged disrespect of the court. It is clearly not within the exception
22 stated in the statute, but comes within the broad purpose of the act to give relief by writ of error.

In the case of *Postal Tel. Co. v. N. & W. R. Co.*, 88 Va. 929, the appellant was enjoined from crossing tracks of appellee; afterwards some employees drove across. Appellant was summoned for contempt, and fined for disobedience to said injunction. He disclaimed acts of servants, as having been authorized. This court not only took cognizance of the matter, but *is* also reversed the lower court as plainly erroneous. It quoted from the *Well's case*, *supra*, as follows:

"To vindicate his conduct, it is not necessary to be shown that he was right in his opinions, but it is necessary to be shown that he was acting in good faith, for what he believed to be the interest of his clients, &c."

The case of the *Balt. & Ohio Rwy. Co. v. City of Wheeling*, 13 Grat. 40, was for a disobedience of the order of the court in doing certain work.

Unfortunately for the appellant it went up *by an appeal* and not a writ of error. This court refused to consider it on that ground, p. 57.

In *Miller's case*, 80 Va. 33, the appellant had been summoned to serve as a juror; he refused to obey and attend. He was fined for contempt. He went up by a writ of error, and was discharged.

In *Kendrick's case*, 78 Va., 490, the same question arose, which arose in *Ex parte* Kearney, 7 Wheat. 38, viz. the punishment of a witness *for refusing to obey an order of a court* to answer a question. The case came to this court upon a writ of error, and was considered.

In *Cullen's case*, 24 Grat. 624, the same question arose, and the same procedure was had by writ of error. *Temple's case*, 75 Va. 892, presents a similar case.

We know of no case in Virginia in which the right to be heard in Virginia by a higher court in a contempt proceeding, has been refused.

We submit that the spirit of the Virginia decisions and statutes are against such a refusal. We insist that under the Virginia statute, construed as above shown in the Wells case, is given the right to grant a writ of error in this case.

23 But suppose that your Honors should hold that, notwithstanding the above authorities, section 4053, Code of Va., does not embrace this case; yet we claim that we are entitled to a writ of error under section 88 of the Constitution of Virginia, and that anything in said section denying us such a right is void, as a violation of said section of said Constitution.

It appears from the above decision that said section 4053, Code 1904, is substantially in the same words as section 4, chapter 209, Code 1849, and is in exactly the same words as section 4053, Code 1887. But those statutes were adopted by the Legislature, when this court had no constitutional jurisdiction, when it was virtually subordinate to the Legislature, when the Legislature had power to give this court jurisdiction, and had full power to take it away. *Price v. Smith*, 93, Va., 14.

When the present Constitution was adopted such a condition was deemed unwise, and detrimental to this court. It was thought that this court should in certain things be absolutely independent of the

Legislature, that as to those great rights, involving life and liberty, and constitutional provisions and protections, it should stand constitutionally clothed with full and appropriate power.

Hence said section 88 of the present Constitution provides that "it shall, by *virtue of this Constitution*, have appellate jurisdiction in all cases, * * * involving the life or liberty of any person."

Hence the question is, whether a contempt proceeding, involving the liberty of a person is embraced in that broad language, "*in all cases* * * * involving the life or liberty of any person." If it is so embraced, then the Legislature has no power to take away such jurisdiction from this court, and if section 4053 does attempt to deprive this court of such jurisdiction, it is void.

From the earliest English decisions to the present day and in this, country, punitive contempt proceedings have been declared to be criminal proceedings. See *Ex parte Kearney*, 7 Wheat. 38; *Bessette v. Conkey Co.*, 194 U. S. 324. In the former case the Supreme Court of the United States said it had no jurisdiction, because it was a criminal proceeding. In *Ex parte O'Brien*, 127 Mo. 477, it is said: "As remarked by an author of acknowledged merit, 'contempt of court is a specific criminal offence, and the fine imposed is a judgment, in a criminal case. The adjudication is a conviction, and the commitment in consequence thereof is execution.'" See language in 7 Wheat. p. 38, 3 Wilson, on p. 399.

In section 51, chapter 169, 1 Rev. Code, 1819, p. 612, is found the act of Jan'ry 12, 1813, above referred to. The heading of chapter 169 is "Criminal Proceedings against free persons."
24 Thus we see that from the earliest years of this State contempt proceedings are "Criminal Proceedings."

In *Balt. & Ohio Rd. v. City of Wheeling*, 13 Grat. 40, it is said "A contempt of court is in the nature of a criminal offence; and the proceeding for its punishment is in the nature of a criminal proceeding."

It is evident therefore that it is a criminal proceeding. But the Constitution does not say that it must be a prosecution for a crime. It does not say in all criminal cases. It says in *all* cases, &c., "involving the life or liberty of any person." It applies to "all cases." All that is required is, that it shall be one "involving the life or liberty of any person." Surely where a man can be imprisoned, if he does not pay a fine, involves his "liberty." It would be a narrow construction to be given to the necessarily broad language of a Constitution, to hold that it was intended to embrace only the ordinary criminal prosecutions.

In *State v. Leftwich*, 41 Minn. 42, it is said: "That the authorities which hold that at the common law the authority of every court to punish for contempts committed in its presence is final and incontrollable, cannot apply here, where, by the Constitution, the appellate jurisdiction of this court extends to all cases at law and in equity."

In *Baldwin v. State*, 126 Ind. 24-31, it was held that, as the Indiana statute conferred upon an officer authorized to execute a warrant in a criminal case authority to bail, an officer arresting for contempt could take bail.

In *Marinan &c., v. Baker*, 78 Pac. 531, and in *Tyler v. Connolly*, 65 Cal. 28, the jurisdiction of the Courts of Appeal, respectively, were denied, because the language of the constitutions respectively limited the jurisdiction of the courts to cases "rendered upon any indictment" or "prosecuted by indictment."

In *Bullock & Co. v. Westinghouse & Co.*, 63 C. C. A. 607, the power of the Circuit Court of Appeals of the United States to grant writ of error in contempt proceedings was in question. The court recognized the previous decisions of the Supreme Court of the United States, denying that any such writ could be had in any such proceedings. But it held that it had been given such power, because the statute, creating it, gave it appellate jurisdiction "in all cases
25 arising under the *criminal laws*." It held that that language was broad enough to cover contempt cases.

The same question as to the construction of these words arose in *Bessette v. Conkey Co.*, 194 U. S. 324. The Supreme Court reviewed its previous decisions, and showed that it rested upon the fact that it had no appellate jurisdiction in criminal cases. It then unanimously held, as follows:

"The thought underlying the denial by this court of the right of review by writ of error or appeal has not been that there was something in contempt proceedings which rendered them not properly open to review, but that they were of a criminal nature, and no provisions had been made for a review of criminal cases. This was true in England, as here."

It further held that contempt proceedings were embraced in the words:

"In all cases arising *under the criminal laws*," and, therefore, that a writ of error would lie in such a case.

It must be admitted that the language of the Constitution above quoted,

"All cases involving the life or liberty of any person," is far broader and more comprehensive than that of the statute, which was held sufficient by the Supreme Court of the United States to give jurisdiction.

In *State v. Bland*, 88 So. W. (Mo.) 28, it was held that a certain order was a civil contempt, and was appealable under Rev. St. 1899, Sec. 806, which provided that any party aggrieved by any judgment in any civil case from which an appeal is not prohibited by the Constitution, may appeal from any final judgment in the case.

In *Hurley v. Com.*, 188 Mass. 143, 74 N. E. 677, it was held that, "Under Rev. Laws c. 193, which provided that a judgment in a *criminal case* may be examined on writ of error, and Chap. 156, Sec. 3, which declares that the Supreme Judicial Court shall have general superintendence of all inferior courts to correct error &c., a judgment of adjudging one guilty of a criminal contempt may be reviewed on writ of error."

We submit, in the light of the broad language of the Constitution of Virginia, and in the light of the above authorities, that this court has the power to grant a writ of error in this case, even if it comes within the exception stated in section 4053, Code Va., 1904.

The next question is, Should the writ be granted?

26 We insist that no contempt should have been declared in this case.

In *Republic of, &c., v. Erlanger*, 36 L. Times Rep. U. S. 332, Jessel, M. R., said:

"Therefore, it seems to me that this jurisdiction of convictment for contempt, being practically arbitrary and unlimited, should be jealously and carefully watched and exercised with the greatest reluctance and greatest anxiety on the part of the judge to see that there is no *other mode* which is not open to the objection of the arbitrariness, and to a certain extent unlimited power, which can be brought to bear upon the subject."

"I have myself had on many occasions to consider this jurisdiction, and I have always thought that, necessary though it be, it is necessary only in the sense in which extreme measures are sometimes necessary to preserve men's rights; that is, if *no other pertinent remedy* can be found."

In *Doe, &c., v. Bywater*, 7 Mang. G. & S. 793-4, it is said:

"That I have always understood that an attachment for contempt goes only where the party has been called upon to do, and has wilfully omitted to do, some specific act. But the court always takes special care to see that the award is express and distinct in directing the particular matter to be done before it will attach the party for disobedience of it."

In *Ross v. Butler*, 57 Hun, 110-112, it is said:

"If there is one thing which is well settled in reference to the power of the court to enforce by attachment its judgment or decree, it is that such judgment or decree shall be definite and certain; that there shall be no opportunity for ambiguity, but that the party proceeded against is to be adjudged to do a certain specific act." &c.

In *Birchett, &c., v. Bolling*, 5 Munf. 142-456, this court, after a most elaborate argument by able counsel, said:

"But this court is of opinion that the decree upon the attachment is erroneous, as it subjects the appellants to that process for refusing obedience to a decree which as yet remains general and uncertain, and the extent of which, as it relates to them, they had no adequate means to ascertain."

Another principle is equally as well settled.

In *Hutton v. Superior Court*, 81 Pac. 409-10, it is said:

"Contempt proceedings are *quasi* criminal in their nature,

27 and an intent to commit a forbidden act is as essential to guilt as in the case of a charge of a criminal offense."

One acting in good faith and meaning no disrespect to the court should not be punished for contempt. *Broome v. Riddle*, 86 S. W. 978; *Powers v. People*, 114 Ill. App. 323. This court in *Carter's case*, 96 Va. 791-802, said: "It is true that, with respect to conduct or language, where the intent, with which a thing is said or done, gives color and character to the act or words, a disclaimer of any purpose to be guilty of contempt or to destroy or impair the authority due to the court, is a good defense; but this is true only

of language or acts of doubtful import, and which may reasonably bear two constructions."

This principal is stated even more strongly in *Wells' case*, 21 Grat., *supra*.

"Where disobedience of a decree is not willful, and does not clearly appear to have arisen from intent to set at naught or bid defiance thereto, the power to punish for contempt cannot be properly exercised." *Kahlbon v. People*, 101 Ill. App. 567-8; *Rapalje on Contempts*, s. 115; *Pub., &c., Corpn. v. De Grote*, 74 Atl. 65-76; *U. S. v. Dodge*, 2 Gall. 312, 131 Ind. 304-318.

Judged by the above principles, we submit that no contempt was intended or committed.

1st. The decree was not sufficiently specific or definite to justify a court in exercising its high power to punish for a contempt.

2d. It is manifest that your petitioners not only did not intend to violate the decree, but they sought a decision from a lawfully constituted body to guide them, so that the decree of July 21st, 1904, would not be violated.

3d. The decision of the Corporation Commission in declaring that the name, "Virginia Branch, Junior Order United Americans," was such as distinguishes it from any other corporation chartered for similar purposes," was by the Constitution and statute laws of Virginia final and conclusive.

4th. The said name is not a "name of like import" with that of the "State Council of Virginia, Junior Order United American Mechanics of Virginia."

The decree enjoined the National Council, Junior Order United American Mechanics, certain individuals by name and "their successors as officers of the voluntary association," then styled
28 Virginia State Council, Junior Order United American Mechanics of Virginia, and "all others who are made defendants to this suit under the general description of parties unknown."

The said decree of July 21st, 1904, first *declared* three things decided by the decree.

1st. That the act of February 17th, 1900, was constitutional and valid.

2d. That the plaintiff was the supreme head of the order in the State of Virginia.

3d. That the plaintiff had the full and exclusive authority to grant charters to subordinate councils, &c.

But these declarations were no part of the injunctive feature of the decree. They were merely declaratory of the court's construction of said statute. After these declarations follows the injunction.

After setting forth who were embraced in the decree, it says that they be:

1st. Perpetually enjoined and restrained from continuing the use within the State of Virginia of the *name* of the State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, or *any other name of like import* likely to be taken for that of the plaintiff.

2d. From the use of seal of said plaintiff within the State of Virginia.

3d. From carrying out within the State of Virginia, under the *name* of the plaintiff, or *any other name of like import*, or any of the objects for which the said National Council of the Junior Order of United American Mechanics of the United States of North America, or the said voluntary association, organized on or about March 2nd, 1901, as aforesaid, were organized.

4th. From using within the State of Virginia the *name* of the said plaintiff, or *any other name of like import*, in the pursuit of the objects for which the said plaintiff was chartered.

5th. That all and any of the said defendants, under the *name* of plaintiff, or *any other name of like import*, be enjoined from granting charters to subordinate councils within the State of Virginia, and from representing themselves to subordinate councils within the State of Virginia, as the head of the said order in said State of Virginia, and from interfering within the said State of Virginia
29 in any way with the pursuit by the said plaintiff of its objects and purposes within the State of Virginia.

6th. That the said National Council of the Junior Order of United American Mechanics of the United States of North America, and the said voluntary association organized on or about March 2, 1901, as aforesaid, and their agents and officers be, and they are hereby, perpetually enjoined and restrained from designating their officers within the State of Virginia by the appellations set forth in the bill," &c.

It will be seen that in all of said subdivisions, except the 2d and 6th, the acts prohibited are forbidden from being done under the name of the plaintiff, or "any other name of like import likely to be taken for that of the plaintiff." The second subdivision need not be considered, as it is not pretended that your petitioners have used their seal, and the sixth will be noticed later on.

It is not pretended that we have used the plaintiff's name, hence, the only contention that could arise would be, whether the name "Virginia Branch, Junior Order United Americans," is a name of "like import," likely to be taken for "State Council of Virginia Junior Order, United American Mechanics of Virginia."

The only definite and certain prohibition in the decree is against the use of the name of the plaintiff. The prohibition against using a "name of like import" is general and uncertain. It was a matter about which, one desiring and striving to obey the order of the court might be mistaken. It was therefore a case in which, if it appeared to have been an honest mistake, "this jurisdiction should be jealously and carefully watched and exercised with the greatest reluctance and greatest anxiety on the part of the judge," &c.

The law books are full of cases in which the lower and the higher court differ as to when names are of like import to each other. It is a matter about which the most honest minds might differ.

If, therefore, these names are not clearly of the same import as "likely to be taken" for each other, it is not a case in which a court should exercise its high prerogative, and punish a person. The

record shows that the petitioners tried by every means known to the law to avoid the violation of said injunction. They could get no information from the Chancery Court by which they could be guided. They sought the advice of counsel. They abandoned the name first selected by them, because they feared it might be a name of like import. They also submitted the name last chosen to the Corporation Commission, the only body designated by the statute law of the State to determine whether their name would "distinguish it from any other corporation chartered for similar purposes." At the suggestion of the Corporation Commission, their counsel notified the counsel of the plaintiff of the application. The counsel refused to appear before the Commission and point out any objection. The Commission then examined the record in the original case. After examining the decree of July 21st, 1904, it held that the name here at issue was unobjectionable, as required by the statute. Thus your petitioners took every possible step known to the law not to violate the decree. That body, selected by the laws of Virginia to pass upon the similarity of names, held that the name given was not "a name of like import."

Surely it cannot be in the light of such facts that such conduct can be contempt of court, if the language above quoted from Carter's case, *supra*, and the opinion in Well's case, *supra*, is the law of this State.

In addition to these facts, the circular filed with the petition for the rule shows your petitioners made not the slightest effort to be confounded with the plaintiff, but stated the existence of the two separate organizations, and only sought harmony, and, if possible, reunion.

Surely, if a technical contempt had been committed, such circumstances should have been taken as a satisfactory defense. As was said *in re Wood*, 82 Mich. 75: "The question of jurisdiction necessarily involves an inquiry whether the contempt alleged was, in fact, a contempt of the court, and committed under circumstances which authorized it to proceed to punishment therefor." See the decision of this court in *Wise's case*, 97 Va. 779, 127 Mo. 190, 81 Pac. 409. Let it be noticed that the evidence is all in writing, with virtually no contradiction. The simple question is, do the facts show a case of contempt?

We submit that the names are not of like import; that is, so alike that persons might join one organization thinking that they were joining the other. In this very case the Supreme Court of the United States, in speaking of the contention then made, that the name of the State Council of Virginia, Junior Order United American Mechanics of Virginia, was an infringement upon the name National Council, Junior Order United American Mechanics of North America, denied the similarity was such as to be misleading. It said:

"The name in question is not the name of the principal defendant, but distinguished from that name as State and National Councils no doubt generally are distinguished by members of similar institutions. It does not seem likely that any one would join the

plaintiff, and certainly no member could be retained in ignorance of its alienation from the National Council."

Much more is it true, that no sensible man would be mis-
31 led by the name at issue into thinking that he was joining the plaintiff body.

In determining this question whether the name at issue is a name of like import, we submit that it should be judged, as if it was an original question, and should not be affected by the fact that an injunction has been issued. The question of similarity of name should be determined only by the general principles applicable to such questions.

Relief in cases of dispute as to similarity of names is granted upon the same principle that a trade name or mark is protected.

"Relief in such cases is granted only where the defendant, by his marks, signs, labels, or in other way, represents to the public that the goods sold by him are those manufactured or produced by the plaintiff, thus palming off his goods for those of a different manufacture to the injury of the plaintiff." 128 U. S. on p. 604, 51 Conn. 324, 11 House of Lords 523.

Here the name could deceive one in this State. Here the evidence clearly shows that the difference between the two organizations were clearly and positively announced in the circular letter of J. W. Jones, filed as an exhibit with the bill. Yet the burden was on them to show the injurious effect from the name. 114 Ill., on p. 425.

The test is announced in *Internat. Trust Co. v. Internal Loan & Trust Co.*, 153 Mass. 274-278, as follows:

"It is not sufficient that some person might possibly be mislead, but the similarity must be such that any person with such a reasonable care and observation as the public generally are capable of using, and may be expected to exercise, would mistake the one for the other."

In that case the court held that the addition of the words "of Kansas City, Mo.," to the name of the defendant would be sufficient. See also 122 Mass. 139-148, 1 Chan. Div. (1894) 544.

In *Supreme Lodge, Knights of Pythias, v. Improved Order, Knights of Pythias*, 113 Mich. 133, the court said: "The only way that the order can be damaged, as the least reflection will prove, is by depriving it of members who would otherwise join it."

"Where the name was not chosen for the purpose of deception, and has not been used under circumstances intended or calculated to deceive, the similarity of names must be such as to deceive ordinary persons proceeding with ordinary care."

In the case at bar there is not a piece of evidence that your petitioners intended or desired that their organization should be taken for that of plaintiff, nor that it ever will be so taken. On the contrary, the circular filed as an exhibit with the plaintiff's
32 petition explicitly declares the difference and separation between the two organizations.

The Michigan Supreme Court, after examining into the authorities, held that the names were not of similar import. See also *Plant Seed Co. v. Michel Plant & Seed Co.*, 37 Mo. App. 313-321.

In *ex parte Walker*, 1 Tenn. Chan. 97, the question was as to the similarity of the names, "The Ladies' Good Samaritan Society of Nashville" and "The Nashville Ladies' Good Samaritan Society." The court held that, to prevent any trouble, "no very material change need be made. The omission of the word 'good' from the name will suffice."

In the matter of *United States Mortgage Co.*, 83 Hun. 572, the United States Trust Company attempted to prevent the other company from having its name changed to United States Trust and Loan Company. The court refused to prohibit the change.

In *London & Provincial Law Assurance Society v. London Provincial Joint Stock Life Insurance Company*, 11 Jurist 938, an injunction was prayed, but declined, as the case then appeared. The Vice-Chancellor said: "And the court will consider whether it is reasonably apparent that there is such deception as is likely to produce injury. Now, it strikes me that, when persons are going to insure, that they will look at the nature of the society before doing so. The first describes itself as a Law Assurance Society; that is to say, a society which lawyers maintain. The other is a joint stock insurance—no assumption of anything like that feature which is described by the word 'law,' but merely a general combination of persons who profess to be the London and Provincial Joint Stock Insurance Co."

Here the plaintiff declares itself by its name to be "United American Mechanics." Your petitioners are named "United American," with other palpable distinctions in the name.

The plaintiff itself, in its petition for the rule, shows that it recognized the distinctions in the two names, and tried to overcome such distinctions by asserting that they were popularly known as "Junior Orders." We submit that such an assertion can have no effect. The plaintiff is entitled to no protection except such as is given by its full legal corporate name. Its bill prayed for no protection except for its corporate name. "The process for contempt lies for disobedience of what *is* decreed, not for what *may be* decreed." *Taliaferro v. Hord, &c.*, 1 Rand. 242-7.

33 This same contention was made in *Boston Rubber, &c., Co. v. Boston Rubber Co.*, 149 Mass. 436. But the court, in construing the statute against similarity of name, said on page 441:

"By the name previously in use by an existing corporation, the statute means the corporate name, and not another name by which the corporation may have been known." See also 83 Hun., on page 575.

The record in the original case shows that the plaintiff cannot be entitled to the use of the words "Junior Order" as a trade name. It shows that the words were in use by many associations before it obtained its charter. It is now in use by the loyal subordinate councils, associations existing before it obtained its charter. It appears in the State charter granted to the "Trustees of the Lovettsville Council, No. 101, Jr. O. U. A. M., of Lovettsville, Virginia" (Acts 1897-8, p. 141), by act of Assembly before plaintiff obtained its charter. It has been for many years, and now is, in use in most

of the States of this Union. Hence, it is against every rule of law for it to claim exclusive right to those two words as a trade name.

In *Hygeia Water Ice Co. v. New York Hygeia Ice Co.*, 140 N. Y. 94-97, the court said:

"These two corporations certainly have different names, though the word "Hygeia" occurs in both. But this fact would not warrant us in assuming, as a matter of law, that the name adopted by the defendant had deceived the public, or is calculated to deceive them, or that any confusion with reference to the identity of the two corporations exists to the prejudice of the plaintiff in consequence of the defendant's acts."

See also *Colonial Life Assurance Company v. Home and Colonial Assurance Company, Limt'd.*, 33 Beav. 548. See long list of cases in 7 Thomp. Corpns., Sec. 8184. In section 8185 it is said:

"The Philadelphia Court of Common Pleas refused to approve a charter to the 'Waverly Ladies of the Red Cross,' in view of the remonstrance of the 'Associate Society of the Red Cross of Philadelphia'; but the applicants having amended their application by inserting in their name the words 'order of,' it was approved.

We again insist that, to hold one guilty of contempt for using a name like that of your petitioners obtained from the Corporation Commission is against every principle of law, both as to contempts and as to what is a "name of like import." We submit that the wise and eloquent statement of so able a Chancellor as Jessel, above quoted, will be without avail if your petitioners are to be punished for a contempt. This summary power should not be exercised
34 unless there is "no other mode," "no other pertinent remedy." The plaintiff had other and more appropriate remedies than that of proceeding for a contempt.

It was offered an opportunity to object before the Corporation Commission, but deliberately refused. Had it appeared before the Commission, and failed in its objection, it had by statute a right to pray from this court a writ of error and supersedeas. See section 3454, Code 1904. Ought a court to entertain this summary proceeding upon the invocation of a party who so acted? Is it not a manifest effort to misuse this high power of a court when there was first offered to the plaintiff "other pertinent remedy?"

By appearing before the Corporation Commission, it would have prevented the conflict of jurisdiction now existing in this case. By appearing before the Corporation Commission it would have gotten from the commission, or from this court, by writ of error, all the protection it desired. By appearing before the commission it would have saved your petitioners the expense of the charter fees and the expenses of organization.

Had the plaintiff been thus invited to come before a court and offer its objection, and so refused, would it afterwards have been heard to asked for a punishment for contempt? Should not the Corporation Commission, when striving to perform its statutory duties, be entitled to the same consideration?

We submit that the conduct of the plaintiff ought to have estopped it from being afterwards heard by the Chancery Court. Under such

circumstances, the act of your petitioners should have been declared not to be a contempt in law.

Even after the charter was granted, there existed more appropriate mode of procedure for the plaintiff.

It could have obtained any deserved relief by the common law writ of *certiorari* against the Corporation Commission for an alleged excess of jurisdiction. See 6 Cyc., pp. 738-9, 745-6.

In *Mackaboy's case*, 2 Va. Cas. 268, it was said: "It is a general rule, well established, that in cases — justice of the peace, orders, summary proceedings, and *trial before newly created jurisdictions*, who proceed not according to the course of the common law, and where the party cannot have a writ of error, he shall have a writ of *certiorari*." *Tankersley v. Lipscomb*, 3 Leigh 813.

In acts of Assembly, 1902-3-4, p. 635, Sec. 3218, it is provided:

"Jurisdiction of writs of mandamus, prohibition and *certiorari*, except such as may be issued from the Court of Appeals, shall be in Circuit Court of the county, or in the Circuit or Corporation Court of the corporation wherein the record of proceeding is, to which the writ relates."

By that statute was preserved the common law writ of *certiorari*.

Or, if the decision of the Corporation Commission was not a finality, the plaintiff might have proceeded by a suit for an injunction. Either course would have been more reasonable and appropriate than a proceeding for contempt.

Under the contempt proceeding, our right to our corporate name, our franchise, our right to property has been tried and determined. Surely such a result should not be brought about by a contempt proceeding. See Beach on Receivers, Sec. 247.

In *Baldwin v. Hosmer*, 25 L. R. Anr. (Mich.) 739-43, it is said:

"Proceedings for contempt are not appropriate for the trial of issues involving the title to this fund, or to determine the validity of the lien, which the garnishee claims."

In re Paschal, 10 Wal. 483-91-2, was a proceeding "as for a contempt" against a lawyer. The court said:

"The case is one in which the parties should be left to the usual remedy at law, where the questions of law and facts are noted between them can be more satisfactorily settled than can be in a summary proceeding." See, *ex parte, Hollis*, 59 Cal. 405-415.

No evidence was offered in this case that the use of the name given to your petitioners would ever have done the plaintiff any harm. Yet it was declared to be a name of like import, and your petitioners were punished.

We submit that the court erred in holding our acquisition of and our right to our name was a contempt. Your petitioners also insist that the court was without jurisdiction to punish them after the Corporation Commission had passed upon the question of the similarity of name.

By section 156 of the Constitution of Virginia, 1902, it is provided:

"Subject to the provision of this Constitution and to such requirements, rules and regulations as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all the charters," &c.

Section 1105 (*d*), Code 1904, provides for the incorporation of fraternal associations. Subsection 2 reads: "Such certificate of incorporation shall set forth—

(*a*) "The name of the corporation, which shall be such as
36 to distinguish it from any other corporation chartered for similar purposes." Section 3 provides that the Corporation Commission "shall *ascertain* and *declare* whether the appellants have, by complying with the requirements of the law, entitled themselves to a charter, and shall issue and refuse the same accordingly." Then, when certain acts of recordation, &c., are performed, the persons are declared to be a corporation "by the name set forth in the certificate."

The record shows that your petitioners complied with every requirement of law; also, that the Corporation Commission, after considering the decree of the Chancery Court of July 21st, 1904, determined that the name applied for would "distinguish it from any other corporation chartered for similar purposes," including the plaintiff.

The question is, what is the effect of that decision by that constitutional body. Is it to be treated as a mere nullity in a contempt proceeding. We insist that it was a *finality*, binding upon other departments of the State government, and if not, it was binding upon all the departments, at least until it was set aside as erroneous in some judicial proceeding by writ of *certiorari* or injunction, or by some proceeding by the State. A similar question arose in *Boston Rubber Mfg. Co. v. Boston Rubber Co.*, 149 Mass. 436. By a statute of that State, the granting of a certificate for a charter was lodged in the secretary of the Commonwealth. He was to determine whether the name presented "is not previously in use by an existing corporation."

The court held "that, in a case within the provision of the statute, the certificate should be conclusive as to *private persons* of the right of the corporate existence by the designated corporate name."

A similar question arose in *American Order of Scotish Clans v. Merrill & others*, 151 Mass. 558, where the State Insurance Commissioner had granted a charter to a fraternal association as "Order of Scottish Clans." The court noticed the act giving the said commissioner the power whether the name was "previously in use, or so similar as to be liable to be mistaken for it." It then held that the decision of the commissioner was final and binding upon the court in any proceeding by "private persons." It said:

"It is part of his duty to pass on the question whether the name applied for has the prohibited resemblance to that of an existing company. We must assume that he will do his duty, and is competent to form a judgment on the question. We cannot prohibit him from doing what the statute expressly commits to his determination, neither can we prohibit private parties from applying to him to do it in the manner expressly authorized by statute." See also
37 *People, &c., U. S. Grand Lodge v. Payne*, 161 N. Y. 229-232; *Paulino v. Portuguese Ben. Asstn.*, 20 L. R. Amr. 272-3.

In the above cases it will be noted that the officers, to whom the power was delegated, were ministerial officers. In this State the Cor-

poration Commission is made by the Constitution not a mere officer, but one of the departments of the State—to whom exclusively is delegated large and important powers. These powers cannot be denied. The only proper way in which the exercise of those powers should be restrained and prescribed is by some proper judicial proceeding, in which the exercise of the particular power shall be directly questioned. In that manner, if the Commission has committed an error, its act can by proper decree or judgment be vacated.

But if private parties are to be allowed to proceed, as the plaintiff did in this case, first, refusing to recognize any power in the Commission over the question, although requested by the Commission to appear, and urge its objection, and secondly, to attack collaterally and by the most arbitrary, though necessary power of court, the decision of a Commissioner in a matter within its general jurisdiction, then there must exist some weakness in the Commissioner's decision, which does not exist in the judgment of a court. It will not be denied that in a matter exclusively within its jurisdiction a court's judgment cannot be attacked collaterally.

Why should conflict of jurisdiction be allowed to be tested collaterally, by a proceeding for contempt? Is it not wiser to adopt the recommendation of the strong English judge, above quoted, and to pursue some "other mode" as we have pointed out? The decision of the Commission was as to a new question. The Chancery Court had never had before it, whether your petitioner's name was a name of "like import." What is the result of the order of the Chancery Court? Has the award of the charter by the Commission been vacated? Does the charter still exist yet, so far as its utility is concerned, remained suspended between heaven and earth? To say the least, is not such a result an anomaly in the administration of justice?

It is true that the fine in this case is not a large one, nor is the franchise at stake one from which much money will result, but the principle involved is an important one. When a department of the government is created with exclusive powers, what is its jurisdiction? Your petitioners could not ask aid of the Chancery Court. That is demonstrated by the Bills of Exceptions 2 and 3. The court at the earnest insist*a*nce of the plaintiff refused them all light save the mere words of the order. It refused even to explain the meaning of those words, although their construction was a matter of dispute before the court in this proceeding. It thus refused to pursue
38 the course adopted by the trial court in *Balt. & O. Rwy. Co. v. City of Wheeling*, 13 Grat. 40. In that case it is stated:

"But whilst it held that there had been a violation of the injunction, yet being of opinion that it was not committed with a wilful intent to disobey the order of the court, the rule was discharged upon the payment of the costs thereof by the Baltimore & Ohio Rwy. Company. And the court then proceeded to explain in its order what action by the company would be a violation of the injunction.

We ask the court's special attention to Bills of Exception 2 and 3. In them the court will see how, when your petitioners were at the bar of the court, they were refused an explanation of the meaning of the decree of July 21st, 1904.

Surely that at least was an error, from which this court will give relief.

If one "is in doubt as to what he may do without violating the restraining order, he should ask for a modification or *a construction of its terms.*" *Warner v. Martin*, 52 So. East., 446-448; 2 High Inj., Sec. 1416; 10 Ency. Pl. and Pract. 1108; 16 Amer. and Eng. Ency. Law, 436.

They were forced by necessity, and required by law, to submit the desired name to the Corporation Commission. Your petitioners got the award of approval from that body, and yet fines for contempt of court have been imposed against them. Surely that cannot be the law of this State, for it would amount to a trap.

Your petitioners submit that upon no equitable principles should they have been held in contempt. They submit that by the Constitution and Laws of Virginia the decision of the Corporation Commission as to the name given your petitioners is final and conclusive upon all private persons and corporations. They submit that if it is not absolutely final and conclusive, it can only be vacated by a writ of *certiorari* by any party affected by it, or by injunction, or by proper proceeding by the State.

Your petitioners also ask that your honors will construe the meaning of the decree of the Chancery Court of July 21st, 1904, *as amended by the Supreme Court of Appeals of Virginia.* Bills of Exceptions 1 and 2 show how great is the necessity for explanation.

Your petitioners insist that it was never intended to interfere with the loyal subordinate councils existing prior to the granting of the charter to the plaintiff on February 1st, 1900. That their status was to remain unaffected and unchanged. That the extent of the decree was to prohibit the use of the name in controversy, or a name of like import, and the creation of any subordinate councils under name of the Junior Order United American Mechanics, or under a
39 name of like import by the National Council, or by any one else, except the plaintiff.

Your petitioners insist that had the decree intended to declare that the act meant to abolish the existence of subordinate councils, mere voluntary associations of citizens of Virginia, unless they joined the plaintiff, and submitted to its authority, it would have been violative of the Bill of Rights of Virginia above quoted, and of the 14th amendment of the Constitution of the United States declaring "nor shall any State deprive any person of life, *liberty* or property without due process of law."

The exclusive power intended by the act to be given to the plaintiff was that of creating any new subordinate councils *of that order*—the extent of the prohibition upon others was that they should not create any new subordinate council of the Junior Order United American Mechanics. In its opinion this court said:

"The charter is *prospective* in its operation. It does not undertake, as we construe it, to deal with vested rights. It interferes with no right of property. It leaves the whole order of things as it existed with respect to the society known as the Junior Order United American Mechanics unaffected, and all rights of persons and property, which had been acquired under that organization undisturbed and

unaffected, *except* that it declares that the corporation created by the act should have full and exclusive authority and jurisdiction to grant charters to subordinate councils in the State of Virginia."

Your petitioners pray that they may know the extent of the rights of said loyal subordinate councils created prior to the date of the charter of the plaintiff.

Your petitioners also insist that the order is void in that it does not specify what acts of your petitioners were in contempt, and also because it fines your petitioners not for a particular act, but upon several general charges, one or more of which could not be in the nature of a contempt of the injunction order. Upon the necessity for the court to specify the acts claimed to be in contempt, was asked attention to the following authorities:

In *State v. Galloway &c.*, 98 Amer. Dec. 404-412, it is said:

"The jurisdiction at common law was indefinite and general. By statute here, it is confined to specific cases. It is, therefore, pursuant to the policy indicated by the legislature, and warranted in our judgment, by sound principle, to hold that the alleged cause of the contempt upon which the judgment is rendered shall be set out upon the face of the judgment, as the ground of jurisdiction upon which the judgment must rest for its validity. In this way the proper power of the courts to vindicate their dignity and maintain their safety, efficiency, and existence may be to a large extent brought into harmony with the protection and safety of the citizens against the inadvertent or unauthorized exercise of the power of the courts to punish contempts.

"A committal order for contempt of court must specify in what particular the party was guilty of contempt, so as to enable him to purge his contempt, and if the order does not contain the necessary particulars it is bad for uncertainty." *Reg. v. Lambeth, &c.*, 36 W. R. 475, cited in 3 Mew's, Digest, p. 2159. See *Bergin v. Deering*, 70 Hun. 381; *Commonwealth v. Perkins*, 2 L. R. Anr. 223.

Here it is impossible to tell from the order whether the mere getting of the charter was a contempt or not. It is impossible to tell whether the getting of the charter was proper, but that the issuance of the circular made the contempt.

It is evident how necessary and important it is to your petitioner to know in what consisted the contempt. If the obtaining the charter was not contempt, then the franchise, the property of your petitioner, is preserved. They can then proceed to act under the same and avoid hereafter any act, like the issuance of the circular.

Your petitioners insist that the order is erroneous in not informing your petitioners exactly what acts were deemed objectionable.

Again the order fined your petitioners for five alleged acts expressed in most indefinite language. Whether the court meant that each one was a contempt, or whether they all together amounted to a contempt, or which one was deemed by the court most objectionable, it is impossible to tell.

It is impossible to tell whether the court would or not have imposed any fine had one or two of the alleged acts not been in its opinion acts of contempt, or if it would have imposed a fine, how large a fine it would have imposed

It fined your petitioners a lump sum for all of said alleged acts. We submit that that renders the order void, if it shall appear evident that one or more of said acts were not violations of said injunction.

In Re Pollard, L. R. 2 Priv. Comp. Apps. 106-120, one of the grounds upon which it was held that the order of contempt should be set aside was stated as follows:

"Their Lordships further report to your Majesty on the proceedings before them, it appears that Mr. Pollard has received one sentence as for six several offences in the judgment pronounced by the Chief Justice, their Lordships are not satisfied that each amounted to a contempt of Court, or was legally an offence. For these reasons they recommended reversal, which was ordered."

11 Here the order is far more objectionable than in the case above cited, where the alleged contempt took place in the presence of the court, and was based upon the recital by the court of the acts objected to.

Here the first of the alleged six acts of contempt is manifestly no disobedience of the injunction order.

It declares that we are in contempt "in disobeying the requirements of the act of the *Assembly of* General Assembly, passed on February 17th, 1900," &c.

The injunction never ordered us to obey "the requirements of the Act of Assembly," &c. How can one be in contempt of an injunction order by "disobeying the requirements of act of Assembly?"

This we insist is a manifest error, which must render the order erroneous.

The second alleged act of contempt is most indefinite and confusing. It can itself be separated into five subdivisions. By it your petitioners are fined for "disobeying the decree of this court declaring and adjudging that the plaintiff"—

(*a*) "is the supreme head of the Junior Order United American Mechanics of Virginia."

(*b*) That it "has power to make constitutions, laws," &c.

(*c*) That in Virginia it has "full and exclusive authority and jurisdiction to grant charters to subordinate councils Junior Order United American Mechanics in the State of Virginia," &c.

(*d*) That it has power to make such constitutions, by-laws and rules of order as it may deem just and proper for the government of subordinate councils.

(*e*) "That its officers shall be such as it may deem necessary," &c., &c.

Your petitioners insist that they have not disobeyed such decree as amended by the decree of this court in a single particle. They insist that there is not a particle of evidence in the contempt proceeding hinting at a suggestion that they disobeyed the decree as to subdivision (*b*) (*d*) and (*e*). Yet they have been fined for disobeying said decree in each of those particulars. Surely such an order cannot be upheld in a summary proceeding like this, where a court is expected to most jealously watch the interests and rights of the parties charged with contempt, and to inform the party as to

what acts are objectionable, so that he may purge himself of the contempt, and avoid it in the future.

Your petitioners insist, as discussed above, that they have not disobeyed so much of said decree, as it set forth in alleged acts
42 of contempt 3, 4 and 5. There is no intimation in the evidence that they have been "representing themselves to subordinate Councils in Virginia, as the head of said Order in Virginia."

Your petitioners insist that they could not have disobeyed the 6th alleged act of contempt, for by the decree, that prohibition was specifically confined to "the National Council, and the said voluntary association, their agents and officers." It could never have been intended to have prohibited any body else.

Your petitioners submit that it is clear from the order in this case the danger and injustice, which will arise in allowing a contempt order to be expressed in generalities, and not in pointing out the specific acts claimed to be wrongful. Your petitioners also insist that it is manifest that they have been fined for doing acts, which find no support whatever in the evidence, and that the court at the request of the plaintiff refused to give them any definite information.

Bill of Exceptions No. 1 shows that the order was drawn by the counsel for the plaintiff. As the plaintiff's counsel had tried so earnestly to prevent the court from giving your petitioners any light or any explanation for future guidance, it is easy to understand why the order did not specify any particular act as being in contempt, but virtually copies and embodies the former decree. Such treatment we submit must appeal to this court to give us relief.

Your petitioners pray for the above reasons that they may have a writ of error and *supersedeas* from this court to the said order of May 8th, 1907.

J. W. FORBES.
THOMAS TATUM OSBORNE.
JOHN T. COX.
J. W. JONES.
C. C. SEDGWICK.
EUGENE CLOVER.
JOHN H. TRIMYER.
B. B. BOTT.
J. E. BOEHM.
G. D. BAKER.
W. H. CUMMINGS.
E. G. WILLIAMS.
By Counsel.

MEREDITH & COCKE.
W. L. ROYALL.
B. D. WHITE.

43 We, attorneys, practicing in the Supreme Court of Appeals of Virginia, are of opinion that there is error in the aforesaid order complained of, and that the same should be reviewed.

C. V. MEREDITH.
W. L. ROYALL.

Received June 10, 1907.

H. S. J.

JUNE 10, 1907

Writ of error and supersedeas awarded. Bond $200.

VIRGINIA:

Petition Filed in Court Under Decree of February 20th, 1907.

STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA,

v.

NATIONAL COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA and Others.

To the Honorable Chancery Court of the City of Richmond:

The State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, shows unto your honor the following case:

The petitioner was chartered by the Legislature of Virginia, by an act of Assembly which took effect on February 17th, 1900, and was duly accepted by said State Council in special session assembled on March 14th, 1900.

In the year 1901, your orator filed a bill in the Chancery Court of the City of Richmond against the National Council of the Junior Order of United American Mechanics of the United States of North America, and certain persons described as officers and members of a voluntary association styling itself "State Council of Virginia, Junior Order United American Mechanics of the State of Virginia," which had been organized at Alexandria, Virginia, on or about March 2nd, 1901, alleging that the said defendants were operating in the State of Virginia.

The said bill set forth the organization and objects of the said National Council, and the organization and objects of the said voluntary association, styling itself "State Council of Virginia,
44 Junior Order United American Mechanics," and also set forth that the plaintiff, under the charter of the Legislature of Virginia, was the supreme head of the Order in the State, and was given the exclusive power and jurisdiction to grant charters to subordinate lodges in the State of Virginia. The said bill set forth that the said National Council, while originating as a voluntary association, had, in the year 1893, become incorporated under and by force of a law of the State of Pennsylvania; that the defendants were denying the validity of the plaintiff's charter of incorporation; were doing, or threatening to do, various things in conflict with the terms of said charter; that the said unincorporated institution styling itself "State Council of Virginia, &c.," had adopted a name exactly the same as the plaintiff's and that its principal officers had been given designations the same as those of the officers of the plaintiff; and that they were, in particulars set forth in said bill, antagonizing and interfering with the operations of the plaintiff

in the State of Virginia; and the said bill thereupon prayed that the said National Council and the persons named as defendants in the bill, officers and members of said voluntary association and others to the plaintiff unknown, should be made parties defendant, and that the said voluntary association should be declared to be illegal, and the plaintiff's charter valid; and that the defendants should be enjoined from continuing the use of the name "State Council of Virginia, Junior Order United American Mechanics of the State of Virginia," or any other name of like import likely to be taken for that of your orator, and from the use of the seal, and from carrying out the objects for which they were organized, and from using the name of the plaintiff, or any other name of like import in the pursuit of any of the objects for which the plaintiff was chartered; and that the defendants, under any such name, or name of like import, should be enjoined from granting charters to subordinate Councils and representing themselves to subordinate Councils as the head of the Order in the State, and from interfering in any way with the pursuit by the plaintiff of its objects and purposes; that they might be restrained from designating their officers by the appellations above set forth as those used by the plaintiff for its officers and agents; that those already elected should be restrained from continuing the use of the aforesaid appellations, and for general relief.

To said bill, demurrers and answers were filed by the defendants, and the bill regularly matured for a hearing upon the pleadings and proofs. And on the 21st day of July, 1904, the Chancery Court, of the City of Richmond, entered a decree in the following words and figures, to-wit:

45 "In Chancery.

"THE STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, a Corporation, Complainant,

v.

"THE NATIONAL COUNCIL OF THE JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA, a Corporation; E. L. S. BOUTON, JAMES R. MANSFIELD, E. H. HEATON, GEORGE B. SEBROW, JR., J. E. BOEHM, O. B. HOPKINS, JAMES S. GROVES, E. R. BOYER, C. P. BLUNT, W. J. GIBSON, J. R. JEWELL, B. B. BOTT, J. R. B. CURTIN, and their Successors, as Officers of the Voluntary Association, Mentioned and Referred to in the Bill of the Plaintiff as Having Been Organized at the City of Alexandria, in the State of Virginia, on or About the 2nd Day of March, 1901, and Certain Parties Unknown, Respondents.

"This cause came on this day to be heard on the bill of the plaintiff and the exhibits therewith filed, on the answer and demurrer of the National Council of the Junior Order of the United American Mechanics of the United States of North America to the said bill, and the exhibits therewith filed; which answer is prayed by said defendant to be treated as a cross-bill, and on the general replication to said answer, on the separate answers of E. L. S. Bouton,

James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott and J. R. N. Curtin, which refer to and adopt as their own the answer and prayer of the said National Council, all of which papers have been heretofore filed, on the general replication to said answers, on the paper marked "Agreed Facts," and the documentary evidence therein mentioned and referred to; on the paper marked "Additional Facts Filed at Bar," and the documentary evidence, and act of the General Assembly, therein mentioned and referred to, all this day filed, and was argued by counsel.

On consideration whereof, the court doth adjudge, order and decree that said demurrer be, and the same is hereby, overruled, and that the prayers of said answers, treated as cross bills, be, and the same are hereby, denied; and the court being of the opinion that the act of the General Assembly of Virginia, passed on the 17th day of February, 1900, entitled An Act to incorporate the State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia, is a constitutional and valid act, doth so declare, and doth adjudge, order and decree that the plaintiff in this suit, by its corporate name of the State Council of Virginia,
46 Junior Order of United American Mechanics of the State of Virginia, is the supreme head of the Junior Order of United American Mechanics in the State of Virginia, and in said State of Virginia shall have the power to make such constitutions, laws, by-laws, rules and regulations as shall be necessary for its government, and shall have, in the State of Virginia, full and exclusive authority and jurisdiction to grant charters to subordinate Councils, Junior Order United American Mechanics in the State of Virginia, with power to revoke the same for cause and to make such constitutions, by-laws and rules of order as it may deem just and proper for the government of subordinate Councils; and that its officers shall be such as it may deem necessary, and shall be elected at such times and places, and in such manner as its rules and by-laws may prescribe.

And the court doth further adjudge, order and decree that the said National Council of Junior Order United American Mechanics of the United States of North America, and the other defendants to said bill, to-wit: E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott and J. R. N. Curtin, who, as shown by their answers, are the agents and representatives of the said National Council of the Junior Order of United American Mechanics of the United States of North America, a Pennsylvania corporation, and their successors, as officers of the voluntary association, mentioned and referred to in the bill of plaintiff as having been organized at the City of Alexandria, in the State of Virginia, on or about the 2nd day of March, 1901, with the same name as that of the plaintiff who, by agreement of counsel, continued in stipulation 29 of the "Agreed Facts," are made defendants to this suit and all others who are made defendants to this suit under the general description of parties un-

known, be, and they are hereby, jointly and severally, perpetually enjoined and restrained from continuing the use within the State of Virginia of the name of State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, or any other name of like import likely to be taken for that of plaintiff; and from the use of the seal of said plaintiff within the State of Virginia; and from carrying out, within the State of Virginia, under the name of the plaintiff, or any name of like import, any of the objects for which the said National Council of the Junior Order of United American Mechanics of the United States of North America, or the said voluntary association organized on or about March 2nd, 1901, as aforesaid, were organized; and from using within the State of of Virginia the name of the said plaintiff or any other name
47 of like import in the pursuit of the objects for which the said plaintiff was chartered; and that all and any the said defendants, under the name of plaintiff, or any other name of like import, be enjoined from granting charters to subordinate Councils within the State of Virginia, and from representing themselves to subordinate Councils within the State of Virginia as the head of the said Order in the said State of Virginia, and from interfering within the said State of Virginia, in any way with the pursuit by the said plaintiff of its objects and purposes within the State of Virginia; and that the said National Council, of the Junior Order of United American Mechanics of the United States of North America, and the said voluntary association organized on, or about March 2nd, 1901, as aforesaid, and their agents and officers be, and they are hereby, *perpetually* enjoined and restrained from designating their officers within the State of Virginia by the appellations set forth in the bill used by the plaintiff for its officers or agents, and from continuing the use in the State of Virginia of said appellations.

And the court doth further adjudge, order and decree that the plaintiff recover of the said defendants its costs in this behalf expended.

Defendants signifying by counsel their intention to appeal from this decree, the same will be suspended for ninety days from the date hereof, provided the defendants, or some one for them, within thirty days from the date of this decree, give bond before the clerk of this court, with security to be approved by him, according to the provisions of section 3456 of the Code, in the penalty of one hundred dollars."

All of the said proceedings in the said Chancery Court, so far as important and relevant hereto, are set forth in a record of the said cause marked, "Transcript of Record in the Supreme Court of the United States. October term, 1905," herewith filed and prayed to be read as a part hereof.

Thereafter the defendants obtained an appeal to said decree from the supreme Court of Appeals of the State of Virginia; and the said Supreme Court of Appeals on the 16th day of June, 1905, rendered a decree affirming the decree of the Chancery Court of the City of Richmond, with the modification set out in said decree of

affirmance. The said decree appears upon top page 155 of the aforesaid record, and is prayed to be read as a part hereof.

And from this decree of the Supreme Court of Appeals of Virginia, the appellants in said court prosecuted a writ of error to the Supreme Court of the United States; and the said last mentioned court, on the 19th day of November, 1906, affirmed the said
48 decree of the Supreme Court of Appeals of Virginia. A copy of the decree of the Supreme Court of the United States is herewith filed.

On the 19th day of December, 1906, the mandate of the Supreme Court of the United States affirming said decree was certified down to the Supreme Court of Appeals of Virginia, or the clerk thereof, and the decree of affirmance of said Supreme Court was duly entered upon the order book of the Supreme Court of Appeals of Virginia, and in turn was duly certified to the Chancery Court of the City of Richmond, and the said decree of affirmance entered in said court on the 21st day of Dec., 1906.

In the month of December, 1906, the defendant in said cause, viz.: the said State Council &c., the voluntary association, had a meeting in the City of Alexandria, Virginia, and took into consideration the litigation and decrees above mentioned, and passed a resolution or resolutions that a corporation should be formed for substantially the same objects for which the said voluntary association had theretofore existed, under the name of "Virginia Branch of the National Organization of the Junior Order of United American Mechanics," or such other name as the committee appointed to procure said charter should suggest. Your petitioner believes agents of the National Council were present at said meeting and co-operated in and advised its action.

That acting under said resolution or resolutions of the Alexandria meeting, application was made to the Corporation Commission of Virginia, for a charter of incorporation under the name of "Virginia Branch of the Junior Order of United Americans," and was granted by said Corporation Commission on the 29th of December, 1906. The said application was signed by J. W. Forbes, Thomas Tatum Osborne, John T. Cox, who, as your petitioner is informed, were members of the aforesaid Alexandria voluntary association above mentioned and in sympathy with its fight in the courts with your petitioner, and were parties to the aforesaid suit as parties unknown. Your petitioner has been informed, and therefore charges, that J. W. Forbes was a past State Councillor of said voluntary association. A copy of the charter granted by said Corporation Commission is hereto annexed and is prayed to be taken as a part hereof, marked "Charter."

The corporation, so chartered by said Corporation Commission, met and organized, accepted said charter, and the officers named in said certificate accepted and have ever since been acting in their offices as named in said charter. And the said corporation, so styled "Virginia Branch of the Junior Order of United Americans," has declared its alliance and affiliation with the National
49 Council of the Junior Order of United American Mechanics, and is acting under the control of the said National Council and recognizes its supremacy.

The said corporation has granted charters to subordinate Councils who were members of the aforesaid Alexandria voluntary State Council, and has granted charters, as your petitioner believes, to other subordinate Councils, in violation of the rights of your petitioner and the decree of this court; and it has, as your petitioner charges and avers, encouraged and supported the said subordinate Councils and the members of the said Alexandria State Council, the voluntary association as aforesaid, in a policy of adherence to and recognition of loyalty to the National Council, and a recognition of its authority as the supreme head of the order in the State, and in defiance of the rights of your petitioner as the supreme head of the order in the State and of the decree of this court affirmed as aforesaid.

Your petitioner avers that it is popularly known and spoken of generally as "Junior Order"; that that word is the distinctive and characteristic one by which your petitioner is generally designated and known in the community, and that the adoption of said name by "Virginia Branch Junior Order of United Americans," is a mere continuance of the Alexandria State Council in subordination to, and under the control of the National Council, in defiance of the decree of this court under a name so chosen as to be liable to be mistaken for the name of this petitioner. In other words, your petitioner says, that the incorporation and continued operation of the "Virginia Branch Junior Order of United Americans" is intended and operates as an evasion of the decree of your honor, and is in violation and contempt of its terms.

Your petitioner avers, that soon after the grant of said charter by the State Corporation Commission, there was a meeting of the said "Virginia Branch of the Junior Order of United Americans" for the purpose of organizing, and they did organize and accept the said charter, and, acting under said charter, the officers for the first year were the following:

State Councillor, J. W. Jones; Vice State Councillor, C. C. Sedgwick; Junior Past Councillor, Eugene Colver; State Secretary, J. E. Boehm; State Conductor, B. B. Bott; State Warden, G. D. Baker; State Inside Sentinel, W. H. Commings (mentioned in said charter as Cummongs); State Outside Sentinel, E. G. Williams; State Chaplain, Rev. W. W. Sawyer.

These officers bore the same designation in the voluntary Alexandria association known as "State Council, &c.," and the persons above named held the same offices under the said organiza-
50 tion. They have entered into and are exercising the duties of said offices in the said corporation, and it is charged and averred that the said persons were defendants to the bill in this court, either in person or as unknown parties, or as successors of the officers of said voluntary association organized at the City of Alexandria, on the 2nd day of March, 1901, who by said decree of the Chancery Court were made parties to the said bill.

Your petitioner has been informed, and therefore charges, that the aforesaid parties, directly or indirectly, have been, and are disobeying the injunction and order of the said decree of the Chancery

Court; they have been attempting to carry out, within the State of Virginia, under a name of like import with that of the plaintiff and liable to be understood as the name of the plaintiff, the objects for which the National Council of the Junior Order of United American Mechanics of the United States of North America and the said voluntary association organized at Alexandria, on or about the 2nd of March, 1901, were organized; they have been granting, and are granting, substantially, charters to subordinate Councils within the State of Virginia, in disobedience to said decree; and have been representing themselves to subordinate Councils within the State of Virginia, in disobedience to said decree, as subordinate to, and under the control of, the National Council; and have been interfering within the State of Virginia, with the pursuit by this petitioner, of its objects and purposes within the State of Virginia; and have been using, and are continuing to use, the same appellations for their officers as are used by this petitioner, in disobedience to said decree.

Your petitioner avers, that the said "Virginia Branch of the Junior Order of United Americans" has recently caused a printed circular to be circulated and sent through the mails to various members of the Junior Order of United American Mechanics of the State of Virginia; which circular shows the objects and purposes for which the said "Virginia Branch of the Junior Order of United Americans" was formed and is being conducted. The said circular is signed, "James W. Jones, State Councillor," and the said Jones is the State Councillor of the said "Virginia Branch of the Junior Order of United Americans," and the said Jones held the same office in the voluntary association which was organized at Alexandria, on or about March 2nd, 1901. A copy of said circular is filed herewith and is prayed to be read as a part hereof marked "Circular."

In addition to the officers named in the said certificate, one John H. Trimyer, as your petitioner believes, has been appointed, and is acting as, the State Treasurer of the said corporation styling
51 itself "Virginia Branch of the Junior Order of United Americans."

In consideration of all which, your petitioner charges that the acts and doings of the persons hereinbefore named, are in evasion, violation and contempt of the aforesaid decree of this court; of the Supreme Court of Appeals of Virginia and of the Supreme Court of the United States; and your petitioner, therefore, prays that the aforesaid J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings, E. G. Williams and W. W. Sawyer may, by proper proceedings, be summoned and punished for their contempt in disregarding and disobeying the aforesaid decree of this court, affirmed as aforesaid by the Supreme Court of Appeals of Virginia and by the Supreme Court of the United States; and may be, by proper proceedings, compelled to abide by, obey and perform said decree in all respects; and that such other, further and general relief may be granted your petitioner as the nature of its case requires and to equity seems meet. But this petitioner expressly waives any and all answer under oath to this petition from the persons above named as being in contempt of this

court, the Supreme Court of Appeals of Virginia and the Supreme Court of the United States, as above set out.

And your petitioner will ever pray, &c.

STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA.

By Counsel.

February 18th, 1907.

SAMUEL A. ANDERSON,
CHRISTIAN & CHRISTIAN.

STATE OF VIRGINIA, *City of Richmond, to-wit:*

I, James Lewis Anderson, a notary public in and for the aforesaid city and State, do hereby certify that A. L. Bradley, Davis Bottom, E. W. Miner, L. R. Smith and E. T. Keeton have this day personally appeared before me in my said city and State, and made oath that the facts as stated in the foregoing writing or petition of the State Council of the Junior — of United American Mechanics of the State of Virginia, dated February 18th, 1907, are true to the best of their knowledge, information and belief.

52 Given under my hand this 18th day of February, 1907.

JAMES LEWIS ANDERSON,
Notary Public.

A. L. BRADLEY.
DAVIS BOTTOM.
E. W. MINER.
L. R. SMITH.
E. T. KEETON.

Extract from Transcript of Record.

Filed in Court Under Decree February 20th, 1907.

VIRGINIA:

In the Chancery Court of the City of Richmond, the 21st Day of July, 1904.

THE STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, a Corporation, Complainant,

v.

THE NATIONAL COUNCIL OF THE JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA, a Corporation; E. L. S. BOUTON, JAMES R. MANSFIELD, E. H. HEATON, GEORGE B. SPROW, JR., J. E. BOEHM, O. B. HOPKINS, JAMES S. GROVES, E. R. BOYER, C. P. BLUNT, W. J. GIBSON, J. R. JEWELL, B. B. BOTT, J. R. N. CURTIN, and their Successors, as Officers of the Voluntary Association, Mentioned and Referred to in the Bill of the Plaintiff as Having Been Organized at the City of Alexandria, in the State of Virginia, on or About the 2nd Day of March, 1901, and Certain Parties Unknown, Respondents.

In Chancery.

This cause came on this day to be heard on the bill of the plaintiff and the exhibits therewith filed, on the answer and demurrer of the National Council of the Junior Order of the United American Mechanics of the United States of North America to the said bill, and the exhibits therewith filed; which answer is prayed by said defendant to be treated as a cross bill, and on the general replication to said answer, on the separate answers of E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott, and J. R. N. Curtin, which refer to and adopt as their own the answer and prayer of the said
53 National Council, all of which papers have been heretofore filed, on the general replication to said answers, on the paper marked "Agreed Facts," and the documentary evidence therein mentioned and referred to; on the paper marked "Additional Facts filed at Bar," and the documentary evidence, and act of the General Assembly, therein mentioned and referred to, all this day filed, and was argued by counsel.

On consideration whereof, the court doth adjudge, order and decree that said demurrer be, and the same is hereby, overruled, and that the prayers of said answers, treated as cross bills, be, and the same are hereby, denied; and the court being of the opinion that the act of the General Assembly of Virginia, passed on the 17th day of February, 1900, entitled an act to incorporate the State Council of Virginia, Junior Order of United American Mechanics of the State

of Virginia, is a constitutional and valid act, doth so declare, and doth adjudge, order and decree that the plaintiff in this suit, by its corporate name of the State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia, is the supreme head of the Junior Order of United American Mechanics in the State of Virginia, and in said State of Virginia shall have the power to make such constitutions, laws, by-laws, rules and regulations as shall be necessary for its government, and shall have, in the State of Virginia, full and exclusive authority and jurisdiction to grant charters to subordinate Councils, Junior Order United American Mechanics in the State of Virginia, with power to revoke the same for cause, and to make such constitutions, by-laws and rules of order as it may deem just and proper for the government of subordinate Councils; and that its officers shall be such as it may deem necessary, and shall be elected at such times and places, and in such manner as its rules and by-laws may prescribe.

And the court doth further adjudge, order and decree that the said National Council of Junior Order United American Mechanics of the United States of North America, and the other defendants to said bill, to-wit: E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Boehm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott and J. R. N. Curtin, who, as shown by their answers, are the agents and representatives of the said National Council of the Junior Order of United American Mechanics of the United States of North America, a Pennsylvania corporation, and their successors, as officers of the voluntary association, mentioned and referred to in the bill of plaintiff as having been organized at the City of Alexandria, in the State of Virginia, on or about the 2nd day of March, 1901, with the same name as that of the plaintiff, who by agreement
54 of counsel, contained in stipulation 29 of the "Agreed Facts," are made defendants to this suit and all others who are made defendants to this suit under the general description of parties unknown, be, and they are hereby, jointly and severally, perpetually enjoined and restrained from continuing the use within the State of Virginia of the name of State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, or any other name of like import likely to be taken for that of plaintiff; and from the use of the seal of said plaintiff within the State of Virginia; and from carrying out, within the state of Virginia, under the name of the plaintiff, or any name of like import, any of the objects for which the said National Council of the Junior Order of United American Mechanics of the United States of North America, or the said voluntary association organized on or about March 2nd, 1901, as aforesaid, were organized; and from using within the State of Virginia the name of the said plaintiff or any other name of like import in the pursuit of the objects for which the said plaintiff was chartered; and that all and any the said defendants, under the name of plaintiff, or any other name of like import, be enjoined from granting charters to subordinate Councils within the State of Virginia, and from representing themselves to subordinate Councils within the State of Virginia as the head of the said Order in the

said State of Virginia, and from intertering within the said State, of Virginia, in any way with the pursuit by the said plaintiff of its objects and purposes within the State of Virginia; and that the said National Council of the Junior Order of United American Mechanics of the United States of North America, and the said voluntary association organized on or about March 2nd, 1901, as aforesaid, and their agents and officers be, and they are hereby, perpetually enjoined and restrained from designating their officers within the state of Virginia by the appellations set forth in the bill used by the plaintiff for its officers or agents, and from continuing the use in the State of Virginia of said appellations.

And the court doth further adjudge, order and decree that the plaintiff recover of the defendants its costs in *in* this behalf expended.

Defendants signifying by counsel their intention to appeal from this decree, the same will be suspended for ninety days from the date hereof, provided the defendants, or some one for them, within thirty days from the date of this decree, give bond before the clerk of this court, with security to be approved by him, according to the provisions of section 3456 of the Code, in the penalty of one hundred dollars.

55 *Charter Filed in Court Under Decree February 20th*, 1907.

This is to certify, that we do hereby associate ourselves to establish a Fraternal Association, or corporation by virtue of the provisions of an act of the General Assembly of the State of Virginia, entitled "An Act Concerning Corporations," which became a law on the 31st day of May, 1903, for the purpose and under the corporate name hereinafter mentioned, and to that end, we do, by this our certificate, set forth as follows:

(*a*) The name of the corporation to be the "Virginia Branch of the Junior Order of United Americans."

(*b*) Its principal office is to be in the City of Norfolk, Virginia.

(*c*) It is formed for beneficial and protective purposes, and among other things, for the advancement of the following objects, namely: to maintain and promote the interests of Americans and shield them from the depressing effects of foreign competition; to assist Americans in obtaining employment; to encourage Americans in business; to establish a sick and funeral fund; to maintain the public school system of the State of Virginia and of the United States of America, and to prevent sectarian interference therewith, and to uphold the reading of the Holy Bible therein, to provide for an orphans and widows' home, and for such other purposes, not inconsistent with the laws of the State of Virginia, or the United States, that will be beneficial to its members, as the by-laws of said association may provide.

(*d*) The number of the directors, or managers, who are to manage the affairs of the corporation, shall be the persons named in the succeeding clause, to-wit: State Councillor, State Vice-Councillor, Junior Past State Councillor, State Secretary, State Treasurer, State Conductor, State Warden, State Inside Sentinel, State Outside Sen-

tenel, State Chaplain and two representatives from each of the subordinate branches of said corporation, as the business and purposes of the association, or corporation may require.

(e) The names of the directors, or managers, who are to manage its affairs for the first year of its existence, are as follows:

State Councillor, J. W. Jones; State Vice-Councillor, C. C. Sedgwick; Junior Past State Councillor, Eugene Colver; State Secretary, J. E. Boehm; State Conductor, B. B. Bott; State Warden, G. D. Baker; State Inside Sentinel, W. H. Cummongs; State Outside Sentinel, E. G. Williams; State Chaplain, Rev. W. W. Sawyer.

(f) The period for the duration of the corporation is unlimited.

(g) The amount of real estate to which the holdings of the corporation, at any time, are to be limited, is 500 acres.

56 (h) The corporation shall have the power, by resolution or by its by-laws, to declare and authorize that any person or persons, may become a member or members of said corporation or association, who may be from time to time selected and appointed to become such a member or members, and may select or appoint as members, the members of other fraternal bodies, or associations, (either individually or as a body), or whether such fraternal bodies, or associations be incorporated or voluntary associations, and whether now in existence, or which may hereafter come into existence. The said corporation or association may hold its meetings at such place or places in Virginia, as it may from time to time determine.

Given under our hands, this eleventh day of December in the year nineteen hundred and six.

J. W. FORBES.
THOMAS TATUM OSBORNE.
JOHN T. COX.

VIRGINIA, *Corporation of the City of Norfolk, to-wit:*

I, Elizabeth W. Walker, a notary public for the corporation aforesaid, in the State of Virginia, do hereby certify that J. W. Forbes, Thomas Tatum Osborne, and John T. Cox, whose names are signed to the writing above, bearing date on the eleventh day of December, in the year nineteen hundred and six, have acknowledged the same before me, in my corporation aforesaid.

Given under my hand this eleventh day of December, in the year 1906. My commission expires on the 13th day of July, 1910.

ELIZABETH W. WALKER,
Notary Public.

VIRGINIA:

In the Corporation Court of the City of Norfolk.

The foregoing certificate of incorporation of the Virginia Branch of the Junior Order of United Americans, was presented to me, Allan R. Hanckel, judge of the Corporation Court of the City of Norfolk, in term time, and, having been examined by me, I thereupon ascertain and certify hereon that the persons signing and ac-

knowledging the foregoing certificate are of good moral character and suitable and proper persons to be incorporated for the purposes set forth in the said certificate of incorporation, and I further certify that the said certificate of incorporation is, in my opinion, signed and acknowledged in accordance with the requirements of the act
57 *fo* the General Assembly of Virginia, entitled, "An Act Concerning Corporations," which became a law on the 21st day of May, 1903, for such cases made and provided.

Given under my hand this 12th day of December, 1906.

ALLAN R. HANCKEL,
Judge of the Corporation Court
of the City of Norfolk.

COMMONWEALTH OF VIRGINIA.

DEPARTMENT OF THE STATE CORPORATION COMMISSION.

Beverly T. Crump, Chairman; Henry Fairfax, Henry C. Stuart.

CITY OF RICHMOND, *29th day of December*, 1906.

The accompanying certificate for incorporation, together with a receipt showing payment of the charter fee required by law, having been presented to the State Corporation Commission by J. W. Forbes, Thomas Tatum Osborne, John T. Cox, and the Hon. Allan R. Hanckel, judge of the Corporation Court of City of Norfolk, having certified that the said persons signing said certificate are of good moral character and suitable and proper persons to be incorporated for the purposes therein set forth, and that the said certificate has been signed and acknowledged by said applicants in accordance with law, the State Corporation Commission, having examined said certificate, now declares that the said applicants have complied with the requirements of law, and have entitled themselves to a charter, and it is therefore ordered that the said J. W. Forbes, Thomas Tatum Osborne, John T. Cox, and their associates and successors be, and they are hereby, made and created a body politic and corporate, under and by the name of Virginia Branch of the Junior Order of United Americans upon the terms and conditions, and for the purposes set forth in said certificate, to the same extent as if the same were now herein transcribed in full (pursuant to the provisions of an act of the General Assembly of Virginia, entitled "An Act Concerning Corporations," which became a law the 21st day of May, 1903), and with all the powers and privileges conferred and subject to all the conditions and restrictions imposed by law.

And said certificate, with this order, is hereby certified to the secretary of the Commonwealth for record.

[SEAL.] BEVERLEY T. CRUMP,
Chairman.

R. T. WILSON, *Clerk.*

58 COMMONWEALTH OF VIRGINIA,

OFFICE OF SECRETARY OF THE COMMONWEALTH.

In the City of Richmond the 29th day of December, 1906, Th foregoing charter of Virginia Branch of the Junior Order of Unite Americans was this day received and duly recorded in this office an is hereby certified to the clerk of the Corporation Court at Norfolk according to law.

D. Q. EGGLESTON,
Secretary of the Commonwealth.

COMMONWEALTH OF VIRGINIA.

OFFICE OF SECRETARY OF THE COMMONWEALTH.

I, D. Q. Eggleston, secretary of the Commonwealth of Virginia certify that the foregoing is a true copy of the charter of the Vi ginia Branch of the Junior Order of United Americans, recorde in this office on the 29th day of December, A. D., 1906.

Given under my hand and the lesser seal of the Commonwealth a Richmond, this eighteenth day of February, in the year of our Lor one thousand nine hundred and seven and in the one hundred an thirty-first year of the Commonwealth.

[SEAL.] D. Q. EGGLESTON,
Secretary of the Commonwealth.

Circular Filed in Court Under Decree of February 20, 1907.

VIRGINIA BRANCH.

JUNIOR ORDER UNITED AMERICANS.

(Incorporated.)

State Vice-Councillor,
C. C. Sedgwick,
217 Clairborne Avenue,
Norfolk, Va.

State Treasurer,
John Trimyer,
Alexandria, V

Jr. Past State Councillor,
Eugene Colver,
Berkley Station, Norfolk, Va.

State Secretary,
J. E. Boehm,
P. O. Box 505, Roanoke, V

59 Place of Next Session, Norfolk, Va., May 21, 1907.

OFFICE OF JAMES W. JONES, STATE COUNCILOR.

VIENNA, VA., *January* 29, 1907.

To the Officers and Members, Council J. O. U. A. M., Virginia:

DEAR SIR AND BROTHER: In order that your Council may be full advised as to the status of affairs between the National Council, th

State Council of Virginia, J. O. U. A. M., and those Councils that remained loyal to the National Council, the enclosed copy of a proposition made to the State Board of the State Council of Virginia, J. O. U. A. M., as reorganized by a recent decree of the Courts of Virginia, and affirmed by the Supreme Court of the United States, by the committee of the independent loyal councils and sanctioned by the National Council, is herewith enclosed.

This same committee, by direction of the independent loyal councils, after they disbanded their State Councils, caused a charter to be granted on December 29, 1905, by the State Corporation Commission, to an order known as "Virginia Branch, Junior Order United Americans." This order gives the incorporators the right to take in any organization that exists or may exist in the State, and to do business and affiliate with any organization or body existing or that may exist outside of the State; hence we are now empowered to take in any local branch of any organization in Virginia that desire to sever its connection with the State organization with which it is now affiliated and become a part of the new organization.

We are not endeavoring to cause any of the local councils of the State Council, J. O. U. A. M., to join us, but we believe now is the time for all differences to be settled, the two factions to be brought together, and all back in the National Council, where we belong, where we can do most good, and where the affiliation will be most beneficent. To that end we caused the enclosed proposition to be forwarded to the State Board, and they have failed to take satisfactory action thereon. That the proposition is a fair one every unprejudiced member will admit. There is no fee to be paid, simply become loyal to the National Council, all differences to be forgotten, and no one to be barred. No fairer proposition can be conceived.

The matter has never been an affair between local councils and the National Council, nor are the local councils consulted to-day. It has been and is an official fight, and very few of the local members know anything further than that such a condition exists, and give it no further thought, while a certain few State officers on each side, with the help of a few State representatives, have been able to keep their members in line for one side or the other. We all know that no action ever taken by a body of men has been satisfactory to every man present, but that is no reason why every dissatisfied member should withdraw and start a little organization of his own. The proper way is to remain a part of the parent organization, and by good management and education to finally cause your views to prevail, unless you discover that they are not for the best.

We submit that the proposition was made in good faith, and we still hope that the local councils of Virginia will cause such influence to be brought on their State Board that the proposition shall be submitted to the local councils for their action, with a view to returning to the National Council, if a majority so decide.

By deciding to again become a part of the National Council, there is nothing to be lost and much to be gained. Two factions will again be united in Virginia, and the members of the reunited Order will be recognized and can command the benefits of being a member

in all States where the National Council controls. Then, too, each council can take advantage of the National Funeral Benefit Department, which is directly under the control of the Order, is very strong financially, and the death claims are paid the day proof of death reaches the secretary-manager.

Another great work in which all loyal councils can participate is the Orphan's Home, at Tiffin, Ohio, where the children of deceased Juniors are reared and educated to become respected citizens of this great country. Over 200 children are now located there, and while we may apparently have no need of such a home as this, there is comfort in knowing there is such a place should circumstances change and the necessity exist.

In June, 1905, at its meeting in Nashville, Tenn., the National Council appropriated $5,000.00 for the use of the National Legislative Committee. Every council, loyal and otherwise, has had an opportunity to help this committee, and they have all responded liberally, showing that the local councils of both factions are all loyal to one of our principles, the Restriction of Immigration. What other National organization has put up such a fight before Congress, and have not the results been such that we should be proud of the National Council?

Brothers, we earnestly request that you give this matter serious consideration, and see if there is not some way we can become one united order in Virginia, and all loyal to the National Council.

The charter was secured, not to continue the legal fight,
61 but because it was the only way in which we could continue to exist as a State body in Virginia. We have no desire to be at odds with any organization, much less one which stands for virtually the same principles and objects that we represent.

I respectfully submit this matter for the consideration of your council, and hope to have your views as to the possibility of a reunion of the two factions in the near future.

Fraternally,

JAMES W. JONES,
State Councilor.

And at another day, to-wit: At a Court of Chancery for the City of Richmond, continued by adjournment and held at the court-room thereof, in the City Hall in said City, on the 20th day of February, 1907.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA,

v.

NATIONAL COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA, and Others.

This cause came on this day to be heard on the papers formerly read, on the decrees of the Supreme Court of Appeals of Virginia and of the Supreme Court of the United States, heretofore entered in this cause, and on petition of the State Council of Virginia, Junior

Order of United American Mechanics of the State of Virginia, filed on this the 20th day of February, 1907, and duly verified by affidavit, and the exhibits therewith filed and was argued by counsel.

On consideration whereof, the court doth adjudge, order and decree, that J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings, E. G. Williams and W. W. Sawyer be summoned to appear before this court on Wednesday the 13th day of March, 1907, at eleven o'clock A. M., to show cause, if any they can, why they should not be fined and imprisoned for a contempt of this court in disobeying, disregarding and evading the decree of this court rendered on the 21st day of July, 1904, as affirmed by the Supreme Court of Appeals of Virginia and the Supreme Court of the United States. A copy of this decree issued by the clerk of this court and served on said defendants on or before the first day of March, 1907, shall be deemed a sufficient summons to said persons, under the provisions of this decree.

62 And at another day, to-wit: At a Court of Chancery for the City of Richmond, continued by adjournment and held at the court room thereof, in the City Hall in said city, on the 13th day of March, 1907.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA,

v.

NATIONAL COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA, and Others.

On motion of J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings, E. G. Williams and W. W. Sawyer, by counsel, it is ordered that the rule or summons made herein on the 20th day of February, 1907, requiring said parties to appear before this court on the 13th day of March 1907, at 11 o'clock A. M., to show cause if any they can why they should not be fined and imprisoned for a contempt of this court, be enlarged and continued until the 4th day of April 1907, at 11 o'clock A. M.

And at another day, to-wit: At a Court of Chancery for the City of Richmond, continued by adjournment, and held at the court-room thereof, in the City Hall in said city, on the 4th day of April, 1907.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA,

v.

NATIONAL COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA, and Others.

On motion of J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver, John H. Trimyer,

J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings, E. G. Williams and W. W. Sawyer, by counsel, it is ordered that the rule or summons made herein on the 20th of February 1907 requiring said parties to appear before this court on the 13th day of March, 1907, at 11 o'clock A. M., to show cause if any they can why they should not be fined and imprisoned for a contempt of this court, which rule was enlarged to the 4th day of April, 1907, at 11 o'clock A. M., be further enlarged and continued to the 15th day of April, 1907, at 11 o'clock A. M.

63 *Affidavit of J. W. Jones, Filed in Court Under Decree of April 15, 1907.*

STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, Plaintiff,

v.

NATIONAL COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA and Others, Defendants.

VIRGINIA,
City of Richmond, to-wit:

This day personally appeared before me the undersigned, a notary public in and for the State and City aforesaid, J. W. Jones, who, being duly sworn, says that W. W. Sawyer has never accepted the office, to-wit, State Chaplain, to which he is named in the charter granted by the State Corporation Commission, to the Virginia Branch of the Junior Order of United Americans, and that the said W. W. Sawyer is not a member of the said Virginia Branch of the Junior Order of United Americans.

JAMES W. JONES.

Subscribed and sworn to before me, this 15th day of April, 1907.
My commission expires April 3rd, 1911.

A. L. BOULWARE,
Notary Public.

Answer Filed in Court Under Decree April 15, 1907.

VIRGINIA:

In the Chancery Court of the City of Richmond.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, Plaintiffs,

v.

NATIONAL COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA and Others, Defendants.

The joint and separate answer of Thomas Tatum Osborne, John H. Trimyer, J. E. Bochm, B. B. Bott, G. D. Baker, W. H. Cummings and E. G. Williams to the petition filed by the plaintiff in the above entitled cause in the said court, on the 18th day of February, 1907.

64 These respondents, for answer to said petition, say that they adopt as their own answer to said petition the answer of J. W. Forbes, John T. Cox and J. W. Jones and others (which said answer is duly sworn to by said parties), and to be filed in this cause.

By MEREDITH & COCKE,
B. D. WHITE,
Counsel.

Affidavit of C. V. Meredith, Filed in Court Under Decree April 15, 1907.

VIRGINIA,
Corporation of the City of Richmond, To-wit:

This day personally appeared before me, the undersigned, deputy clerk of the Chancery Court of the City of Richmond, C. V. Meredith, who, being duly sworn, says that he is and was the attorney for the Virginia Branch of the Junior Order of United Americans, and that, as such, when he presented the draft of the charter desired, under the name of the Virginia Branch of the Junior Order of United Americans, he was informed by Mr. Wilson, the chief clerk of the Corporation Commission, that Mr. Davis Bottom had stated that he had heard that an application would be filed for a charter by those who were in opposition to the State Council of the Junior Order of United American Mechanics, and that Mr. Bottom had requested that it be not granted until he could see it, or that he be notified of the application, and that Mr. Bottom afterwards saw said draft before the charter was granted. The undersigned further states that afterwards he was asked by the president of the Corporation Commission to notify Mr. Samuel A. Anderson, counsel for said State Council, that the desired charter was under considera-

tion by the Commission, and that, if he desired to be heard in opposition to its being granted, that he and the undersigned agree upon some day for a hearing before the Commission. The said president of the Commission said it would be necessary for him to see the decree of the Chancery Court of Richmond in the suit brought by said State Council against the National Council and others, and that thereupon the undersigned loaned him a copy of the record from the Supreme Court of the United States.

The undersigned further alleges that, in obedience to the request of the said president, he notified Mr. Anderson that a hearing would be accorded us if he desired to oppose the granting of the charter.

That Mr. Anderson stated that he would consider what
65 course to pursue, and that after a few days he announced to the undersigned that he had determined not to appear before the Commission in opposition to said charter, but would seek his remedy in the courts. Thereupon the undersigned informed the president of the Corporation Commission of Mr. Anderson's decision not to appear. A few days afterwards the charter complained of was granted.

C. V. MEREDITH.

Subscribed and sworn to before me, this 15th day of April, 1907.

WM. S. WOODSON,
Deputy Clerk of the Chancery Court of the City of Richmond, Va.

Answer to Petition Filed in Court Under Decree of April 15th, 1907.

STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, Plaintiffs,

v.

NATIONAL COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA and Others, Defendants.

The joint and separate answer of J. W. Forbes, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver to the petition filed by the plaintiff in the above entitled cause on the 18th day of February, 1907.

In this answer, the following abbreviated designations will be used for convenience, to-wit:

National Council.—This will be used to designate the "National Council of the Junior Order of United American Mechanics of the United States of North America," the corporation chartered by the State of Pennsylvania in the year 1893.

Petitioner Council.—This will be used to designate the "State Council of Virginia, Junior Order United American Mechanics of the State of Virginia," the corporation chartered by the Legislature of Virginia in the year 1900, and the petitioner in these contempt proceedings.

Alexandria Association.—This will be used to designate the voluntary association which was organized at the City of Alexandria, Virginia, on or about March 2d, 1901.

Corporation of 1906.—This will be used to designate the corporation which was chartered by the State Corporation Commission of Virginia on December 29th, 1906, under the name of the "Virginia Branch of the Junior Order of the United Americans."

63 Respondents, for answer to said petition, or so much thereof as they are advised it is material that they should answer, say:

(1) They admit as true all the allegations contained in said petition down to the clause on page 7, which begins: "In the month of December, 1906." And they respectfully ask the attention of the court to the language of the decree of July 21st, 1904, which they are charged with having violated, viz.: "And the court doth further adjudge, order and decree that the said National Council of Junior Order United American Mechanics of the United States of North America, and the other defendants to said bill, to-wit, E. L. S. Bouton, James R. Mansfield, E. H. Heaton, George B. Sprow, Jr., J. E. Bochm, O. B. Hopkins, James S. Groves, E. R. Boyer, C. P. Blunt, W. J. Gibson, J. R. Jewell, B. B. Bott and J. R. N. Curtin, who, as shown by their answers, are the agents and representatives of the said National Council of the Junior Order of United American Mechanics of the United States of North America, a Pennsylvania corporation, and their successors, as officers of the voluntary association, mentioned and referred to in the bill of the plaintiff as having been organized in the City of Alexandria, in the State of Virginia, on or about the 2d day of March, 1901, with the same name as that of the plaintiff, who, by agreement of counsel obtained in stipulation 29 of the Agreed Facts, are made defendants to this suit, and all others who are made defendants to this suit, under the general description of parties unknown, be, and they are hereby, jointly and severally, perpetually enjoined and restrained, etc., etc., and that all and any the said defendants, under the name of the plaintiff, or any other name of like import, be enjoined, etc., etc., etc., and that the said National Council of the Junior Order of United American Mechanics of the United States of North America, and the said voluntary association organized on or about March 2d, 1901, as aforesaid, and their agents and officers, be, and they are hereby, perpetually enjoined and restrained, etc., etc., etc."

Respondents say that no act done by them, or either of them, since the date of the said restraining order, was done as agents, or representatives, or officers, of the said National Council, or as the agents or officers of the said Alexandria Association. On the contrary, respondents, and each of them, have acted solely in their own private and individual capacity. Respondents Forbes, Osborne and Cox, as individuals, and not as agents, representatives or officers of any association, applied for and obtained a charter of incorporation under the name "Virginia Branch of the Junior Order of United Ameri-

cans"; said application was made in the manner prescribed
67 by law, and said charter was not granted until after a full and free opportunity to the Petitioner Council to be heard in opposition thereto.

(2) Said petition, on page seven, contains the following allegations, to-wit: "In the month of December, 1903, the defendant in said cause, viz., the said State Council, &c., the voluntary association, had a meeting in the city of Alexandria, Virginia, and took into consideration the litigation and decree above mentioned, and passed a resolution or resolutions that a corporation should be formed for substantially the same objects for which the said voluntary association had theretofore existed, under the name of "Virginia Branch of the National Organization of the Junior Order of the United American Mechanics," or such other name as the committee appointed to procure said charter should suggest. Your petitioner believes agents of the National Council were present at said meeting, and co-operated in and advised its action." Respondents deny each and every allegation made in this paragraph, and say that said meeting adopted the following resolution:

"Resolution: Without any intent of being in contempt of court, or without any desire to violate any mandate of the Supreme Court, I offer the following:

Whereas, through certain differences in the Junior Order United American Mechanics of Virginia, it became necessary for certain members of the order of this State constituting a State Council to withdraw its allegiance to the National Council, Jr. O. U. A. M., and to set themselves up as a separate and distinct organization; and

Whereas, said *succeeding* members did, on or about the 17th day of February, 1900, procure from the General Assembly of Virginia a charter for a State Council of Virginia, Jr. O. U. A. M. of the State of Virginia, embracing all members of the said State Council, thus making it the supreme head of the Jr. O. U. A. M. of Virginia, and giving it full and exclusive authority and jurisdiction to grant charters to subordinate councils, and to revoke the same for cause; and to make such constitutions, by-laws and rules of the Order as it might deem just and proper for the government of subordinate councils; and,

Whereas, thereafter said chartered State Council instituted suit for injunction against the National Council and others—such as organized this State Council—in the Chancery Court of the city of Richmond, which court, on the — day of July, 1904, in its opinion, sustained the validity of such charter; and,

68 Whereas, the National Council *et als.* did appeal from such decision to the Supreme Court of Appeals of the State of Virginia, and said court, on the 15th day of June, 1905, rendered an opinion affirming the decree of the Chancery Court, but modified the same by saying that there is nothing in the charter or of the decree of the court below that affect any rights that may have accrued prior to the grant of the charter, February 17th, 1900, thereby leaving the whole order of things as they existed with respect to the Jr. O. U. A. M. of Virginia unaffected, and all rights of persons and property which had been acquired under said Jr. O. U. A. M. un-

disturbed and unaffected, except that it declared that the corporation created by the act shall have full and exclusive authority and jurisdiction to grant charters to subordinate councils in the State of Virginia; and,

Whereas, the National Council further desiring to contest its rights and powers in the premises, appealed from the decision of said Supreme Court of Appeals of Virginia to the Supreme Court of the United States to reverse the decree of said court; and the said cause coming on for hearing, was duly argued and submitted, and on the 19th day of November, 1906, the Honorable Justice Holmes, speaking for the court, delivered an opinion upon the constitutionality of the charter, and affirmed the decree of the court below without modification to any material extent; and said chartered State Council, standing upon such charter rights they have prevailed, which confers upon them powers and attributes ordinarily incident to a corporation.

Therefore, acting upon information and advice of the attorneys on behalf of the National Council, be it

Resolved, 1. That in view of the foregoing and the injunctions of the court issued, or which may be issued, that the charter issued by the National Council, Jr. O. U. A. M., under the date of June 20th, 1901, authorizing and empowering Councils 22, 26, 33, 43, 46, 51, 61, 73, 75, 85, 87, 97, 101, 109, 124, 132, 138 and their successors to be known as the State Council of Virginia, and whereby this State Council was instituted March 2d, 1901, that such charter is hereby surrendered and returned to the National Council, and to become effective December 18th, 1906.

Resolved, 2. That this State Council, composed of Subordinate Councils Nos. 22, 24, 26, 33, 43, 46, 51, 61, 73, 75, 85, 87, 101, 109, 124, 138, 146, 182, 183, 184, 185, 188, 191, 192, 193, 194, 195, 196, 197, 198, 200, 202, 203, 204, 205, 207, 208, 209, 210, representing the loyal branch of the National Council of the Jr. O. U. A. M. in the State of Virginia, recognize the supreme law of the land,
69 and without any desire to evade its injunction, do therefore take this action that the court's findings may be carried out.

Resolved, 3. That a copy of these resolutions be forwarded to the National Councilor, with the charter of this State Council, on December 18th, 1906.

On motion of Bro. Trimyer, each section of the above resolution was acted on separately and adopted."

That after adjournment the advisability of organizing a corporation was discussed among those present, and a committee was named for the purpose of taking such action in the matter as they should see fit; but that, inasmuch as the said Alexandria association had already dissolved and ordered the return of its charter, it could not be true that such action was that of said association, as alleged in the petition.

The said committee met in pursuance of the authority given it, and selected attorneys. After consultation with said attorneys, it was considered that the name first suggested, viz., "Virginia Branch of the National Council of the Jr. O. U. A. M." was a name that might be held or regarded as a name of like import with that of

the petitioner, and it was decided that the name "Virginia Branch of the Junior Order of United Americans" should be the name to be applied for, so as to avoid the charge that the name was of like import with that of the petitioner.

The application was signed by respondents, Forbes, Osborne and Cox, each of whom had been, as alleged in the petition, members of the Alexandria Association, and in sympathy with its fight against the petitioner. The objects set forth in the said application were not in any material respect the same as those for which the petitioner was incorporated. In the paragraph quoted above from page 7 of the petition, it is alleged that the corporation there alleged to have been provided for was to be formed for "substantially the same objects for which the said voluntary association had theretofore existed"; and in the bill it is alleged that the objects of the said voluntary association were substantially the same as those for which the Petitioner Council was organized. On reading the bill and petition together, therefore, it would appear as if it were charged that the objects of the Corporation of 1905 were substantially the same as those of the Petitioner Council, but no such charge is made. Whatever may have been the intent of the petition in this regard, the fact is that the objects of the two corporations last named are not the same, save only in certain immaterial respects, being those for
70 which no one corporation can claim any monopoly. The objects of the Corporation of 1905, as appears from the application, are as follows:

(1) To maintain and promote the interests of Americans and shield them from the depressing effects of foreign competition.

(2) To assist Americans in obtaining employment.

(3) To encourage Americans in business.

(4) To establish a sick benefit and funeral fund.

(5) To maintain the public school system of the State of Virginia and of the United States.

(6) To prevent sectarian interference with said public school system.

(7) To uphold the reading of the Holy Bible in said schools.

(8) To provide for an Orphans' and Widows' Home.

The objects of the Petitioner Council, on the other hand, are as follows, to-wit:

(1) To maintain and promote the interests of Americans.

(2) To assist Americans in obtaining employment.

(3) To encourage Americans in business.

(4) To afford relief to members of the Order and their families in case of sickness, accident or death.

(5) To defray the expenses of their funerals or such other cases of distress as shall be defined by the constitution, by-laws, rules and regulations of the corporation.

(6) To establish an Orphans' Home for the orphans of deceased members.

And the bill expressly declares that the above named are the only legitimate objects of the Petitioner Council. It appears, therefore, that the two corporations have in common the following objects, and no other, to-wit: (1) To maintain and promote the interest of Amer-

icans; (2) to assist Americans in obtaining employment; (3) to encourage Americans in business.

While the 4th and 8th of the above named objects of the Corporation of 1905 are in name the same as the 4th and 6th of the above named objects of the Petitioner Council, they are not in reality the same by any means, for the reason that the provisions made in each are for the exclusive benefit of the members of the said respective corporations, and the provisions made by one of them could not be enjoyed by any person by reason of his membership in the other of said corporations.

71 It appears, therefore, that the Corporation of 1905 has the following very material objects, which are not named in the charter of the Petitioner Council, to-wit: (1) To shield Americans from the depressing influence of foreign competition; (2) to maintain the public school system of the State of Virginia and of the United States; (3) to prevent sectarian interference with said public schools; (4) to uphold the reading of the Holy Bible in said schools.

While it may be true that some of the objects specified in said application were the same as those for which the Petitioner Council exists, respondents submit that it was not the intention of the Legislature in granting the charter of the petitioner to confer upon the incorporators any monopoly of the privilege of promoting the objects named in said charter, or any of them. If so, these respondents insist that the act of Assembly violates the provisions of the 14th Amendment to the Constitution of the United States, which reads: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." It violates the provisions of the said amendment, which reads: "Nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." If so, these respondents insist also that the said act of Assembly and the decree of this court, enforcing the same, violate Article 1, Section 1, of the Bill of Rights of Virginia, which reads: "That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot by any compact deprive or divest their posterity—namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

(3) Respondents are informed, believe and charge that the following statement correctly sets forth the facts in connection with the granting of said charter to the Corporation of 1905. When C. V. Meredith, Esq., the attorney for the applicant for said charter, presented the draft of the charter asked for under the name of the Virginia Branch of the Junior Order of United Americans, he was informed by Mr. Wilson, the chief clerk of the Corporation Commission, that Mr. Davis Bottom, an active member of Petitioner Council, had stated that he had heard that an application would be filed for a charter by those who were in opposition to the State Council of the Junior Order of United American Mechanics, and that Mr. Bottom had requested that it be not granted until he could see it, or that he be notified of the application; that Mr. Bottom

afterwards saw said draft before the charter was granted; that
72 afterwards the said C. V. Meredith, attorney, was asked by the president of the Corporation Commission to notify Mr. Samuel A. Anderson, counsel for said Petitioner Council, that the desired charter was under consideration by the Commission, and that if he desired to be heard in opposition to its being granted, he and the said C. V. Meredith would agree upon some day for a hearing before the Commission. That the president of the Commission informed the said C. V. Meredith that it would be necessary to see the decree of the Chancery Court of Richmond in the suit brought by said State Council against the National Council and others, and that thereupon the said C. V. Meredith loaned him a copy of the record from the Supreme Court of the United States; that the said C. V. Meredith, in obedience to the request of the said president, notified Mr. Samuel A. Anderson that a hearing would be accorded him if he desired to oppose the granting of the charter; that Mr. Anderson stated that he would consider what course he would pursue, and that after a few days he announced to the said C. V. Meredith that he had determined not to appear before the Commission in opposition to the charter, but would seek his remedy in the courts; that thereupon the said C. V. Meredith informed the president of the Corporation Commission of Mr. Anderson's decision not to appear, and that a few days afterwards the charter now complained of was granted.

(4) Respondents submit that, for this Honorable Court to hold them guilty of contempt on account of the action aforesaid in securing a charter of the Corporation Commission, would be equivalent to the court passing upon a matter concerning the granting of charters beyond the mere ascertaining whether the applicants therefor had complied with the requirements of the law, and would for that reason be contrary to the spirit of section 154 of the Constitution of Virginia, which reads as follows: "The creation of Corporations and the extension and amendment of charters (whether heretofore or hereafter granted), shall be provided for by general laws, and no charter shall be granted, amended or extended by special act, nor shall authority in such matter be conferred upon any tribunal or officer, except to ascertain whether the applicants have, by complying with the requirements of the law, entitled themselves to the charter, amendment or extension applied for, and to issue *or issue*, or refuse the same accordingly."

It would also be contrary to section 156, Clause A, of the Constitution, which has conferred upon the Corporation Commission exclusive jurisdiction in the matter of granting charters in the following language: "Subject to the provisions of this Constitution,
73 and to such requirements, rules and regulations as may be prescribed by law, the State Corporation Commission shall be the department of government through which shall be issued all charters and amendments or extensions thereof for domestic corporations, and all licenses to do business in this State to foreign corporations, and through which shall be carried out all the provisions of this Constitution and of the laws made in pursuance thereof for the creation, visitation, supervision, regulation and control of corporations chartered by or doing business in this State."

It would also be contrary to the intent of section 1105 (*d*), clauses 2 and 3, of Pollard's Code, wherein the Legislature has prescribed the sole conditions to be complied with as a prerequisite for obtaining a charter, all of which conditions and requirements were fully complied with by the applicants for the charter now in question.

It would also be opposed to the conclusion arrived at by the Corporation Commission when granting said charter, which said conclusion was to the effect, as required by law, that the name applied for was such a name as to distinguish said corporation "from any other corporation engaged in a similar business, or promoting or carrying on similar objects or purposes in this State," as to which matter section 1105 A, Clause 2, of the Code, requires that the Corporation Commission shall be satisfied before it may grant any application for a charter.

(5) Respondents say that an analysis of the bill filed in this cause by the Petitioner Council will disclose that it was filed for the sole purpose of obtaining protection against the operations of the unincorporated association, which had been organized at Alexandria on March 2, 1901, and which had adopted the same name as that of the Petitioner Council; and that said bill did not ask that the defendants be enjoined from the exercise of any right or privilege guaranteed to them by the Constitution of the United States, or allowed them by the laws of Virginia; that in said bill complaint was made of fifteen distinct acts, of which said acts one was alleged to have been committed by the National Council, five by the defendants in their capacity as organizers and controllers of the Alexandria Association, and the remainder by the Alexandria Association itself; and that no act committed by any of the defendants in their private or individual capacity is complained of. The prayers of the bill are also directed against the doings either of the Alexandria Association or of the defendants as its organizers and controllers. The decree is consistent with the plan of the bill as above set forth. It
74 first determined the validity of the plaintiff's charter, which had been attacked in the cross bill; it then defined the scope of the plaintiff's powers under said charter. After that it enjoined the National Council and the defendants by name (none of the respondents except J. E. Boehm being included by name) and their successors "as officers of the Alexandria Association, and all others who are made defendants to this suit under the general description of parties unknown." Nowhere in said decree is there any injunction against the right of the defendants to take such action in their private and individual capacity, as they should see fit to take. So much of the injunction as restrained the designation of officers by the same name as that used by plaintiff is directed solely against the National Council and the Alexandria Association, and no mention is made in that respect of any person either individually or as an officer or agent of any organization.

(7) Referring to the last paragraph, on page 8, beginning "The Corporation so chartered," respondents deny that said corporation has ever in any manner declared its alliance or affiliation with the

said National Council; and they further deny that said corporation is in any manner under the control of the said National Council or that it recognizes the supremacy of said council. On the contrary the National Council and the Corporation of 1905 are two distinct organizations, entirely independent one of the other.

(8) Referring to paragraph one, on page 9, respondents admit that the Corporation of 1905 has granted charters to subordinate branches, but only of its own orders, and under a name entirely distinct from that of the petitioner, and only for purposes approved by the State Corporation Commission, after opposition on the part of the Petitioner Council had been withdrawn. Respondents deny, therefore, that any such charters were granted in violation of the rights of the Petitioner Council or contrary to the restraining order of this court.

Respondents deny also that said Corporation of 1905 has ever encouraged or supported its said subordinate branches in any policy of adherence to the said National Council, or of recognition of its authority as the supreme head of its Order in this State, except as above set forth, or in defiance of any rights possessed by the Petitioner Council, or of any decree of this court.

(9) Referring to the second paragraph on page 9, beginning "Your petitioner avers," respondents deny that the Petitioner Council is popularly known as the "Junior Order." No such
75 claim as this was made in the bill, and no recognition of any such claim is contained in the said restraining order; but, even if it were true that it is generally known by said name, it is nevertheless a fact that the restraining order in this cause only enjoined "from continuing the use of the name "State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia," or any name of like import likely to be taken for the said name; and so respondents say it would be immaterial if the petitioner were in truth and fact generally known as the "Junior Order," since the only question here is, whether or not the defendants have used the name "State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia," or any other name of like import likely to be taken for said name; and respondents submit that the name of the Corporation of 1905, to-wit, "Virginia Branch of the Junior Order of United Americans," is not a name of like import with that of the petitioner as given above, and is certainly not likely to be taken for said name. The words "Junior Order" is a part of the name of the many subordinate councils of the Junior Order United American Mechanics, created by the National Council of that Order prior to the incorporation of the petitioner and still existing within this State and especially is this true of the "Lovettsville Council, No. 101, Junior Order of the United American Mechanics of Lovettsville Loudoun county Virginia, created by a special act of the General Assembly of Virginia, January 27, 1898. See Acts Assembly 1897-8, p. 141, Chap. 137.

As to the right of the Corporation of 1905 to use the name conferred upon it and to carry out the objects named in its charter,

respondents say that the State Corporation Commission has, under the Constitution and laws of the State of Virginia, the sole right to pass upon matters of this kind, and that said Commission having approved the right of the said corporation to use the name applied for by it, and having also approved the objects named in the application for its charter, such action is binding upon the courts of this State, at least until reversed in proceedings of *quo warranto;* and especially is this true in view of the conduct of the Petitioner Council while the application for said charter was pending. The Petitioner Council is estopped by said conduct to deny the rights which the Commission has conferred upon the Corporation of 1906.

(10) Referring to the last paragraph on page 9, beginning "Your petitioner avers," and the first on page 10, as to officers and appellations, respondents admit as true the allegations made as to the meeting held for the organization of the corporation known
76 as the "Virginia Branch of the Junior Order of the United Americans," and the election of the officers named in first paragraph on page 10, but they deny that the said officers bore the titles by which the officers of the Petitioner Council were designated, except the following three out of a total of nine, to-wit: State Councillor, Vice State Councillor and Junior Past State Councillor, and, as to these, respondents say that said titles were authorized by the Corporation Commission, as above stated, and that the aforesaid restraining order, in so far as it had reference to the titles of any officers, applied in express terms only to the National Council and the Alexandria Association, and their agents and officers, neither of which positions were occupied by respondents. Respondents submit that it was never intended to restrain any persons connected with the Alexandria Association from using said titles, unless in a corporation with a name of like import with that of the Petitioner Council, and that the right to the use of any particular title for an officer cannot become a monopoly, since any corporation has a right to designate its officers in any manner it may see fit.

(11) Referring to the second paragraph on page 10, beginning "Your petitioner is informed," respondents deny that they, or either of them, have directly or indirectly disobeyed the restraining order made in this cause. They deny that the corporate name under which they have been acting was a name of like import with and likely to be taken for that of the Petitioner Council; they deny that said restraining order forbade the use of name *"liable to be understood* as the name of the plaintiff," and they say that the petition is misleading in the use of this phrase, since it tends to create the impression that the said restraining order was of broader application than it actually was. The facts above set forth show that respondents had no intention to disobey said restraining order, and that they have not done so. They also show that respondents have, on the contrary, taken every reasonable means to avoid any such result, and that they are to-day acting under a name which has the endorsement of that department of the State government which has been selected by law to determine when an infringement of an existing name is threatened. Respondents say that, while it is true that the said Corporation of 1906 has attempted to carry out certain

of the objects for which the Alexandria Association was organized, no such attempt has been in violation of the said restraining order, for the reason that said order enjoined such attempt from being made under the name of the Petitioner Council, or any other name of like import, and the name of said corporation is not a name
77 of like import with that of the petitioner, and the same is true as to the allegations as to the granting of subordinate charters by said corporations.

Referring to the last two lines on page 10, beginning "and have been representing themselves," and the first two on page 11, respondents deny the allegations there made as to the disobedience to said restraining order, and they say that these allegations also are misleading, for the reason that, while they allege that said act of disobedience consisted in said corporation having represented itself as being subordinate to the National Council, and under its control, the restraining order went no further than to enjoin the defendants from representing themselves as being the head of the Order of Junior Order of United American Mechanics, and was silent as to the right of said corporation to make any representation it saw fit to make as to its connection with the said National Council; respondents say, however, that, as a matter of fact, said corporation has never represented itself as being under the control of said National Council.

(12) Referring to the second paragraph on page 11, respondents admit the sending out of the circular letter there referred to, and also that the signer of said letter had held office in the Alexandria Association before its dissolution, as aforesaid; and respondents say that this letter furnishes a complete answer to the charges made in the petition, to the effect that they have attempted to evade the provisions of the said restraining order; for, while said Order forbade the use of the name of the petitioner, or any name of like import likely to be taken for said name, thereby intending to prevent any organization from holding itself out as the same organization as the Petitioner Council, the said circular letter, addressed, as it was, to the various councils of the petitioner organization, set forth the name of the two separate organizations side by side, and emphasized the fact that they were not one and the same by its offer to negotiate with the Subordinate Councils of the petitioner for the purpose of consolidation. And the attention of the court is asked to the fact that said letter expressly disclaimed any attempt to induce the members of said Subordinate Councils to desert their organization for the purpose of affiliating with that represented by the writer of said letter.

In conclusion, respondents, and each of them, disclaim any intentional regard of the mandate of this Honorable Court; and they respectfully submit that no act which has been done by them, or either of them, either in their official or in their individual capacity, was done in intentional violation of said restraining order, or in contempt of this court, and they deny each and every allega-
78 tion making such charge. On the contrary, they, and each of them, have acted strictly within their constitutional rights,

and have carefully sought to avoid doing anything that could be construed to be in violation of said order. Before application was made for the charter of 1906, advice of counsel learned in the law was asked as to their rights to make such application, and their subsequent conduct was in accord with the advice then given. The act of the respondents in obtaining the said charter was sanctioned by the State Corporation Commission: the name of the said corporation was approved by said Commission as not infringing upon the name of the petitioner, and the purposes of said corporation were approved as not being in violation of said order; and, before the said charter was obtained, the petitioner counsel had withdrawn its opposition to the granting of the same.

Respondents pray that the affidavit of C. V. Meredith, Esq., which is filed herewith, marked "A," may be read as a part of this, their answer.

And having fully answered, respondents pray that they may be hence dismissed with the costs incurred by them in this behalf.

JAMES W. JONES,
State Councilor, Virginia Branch,
Junior Order United Americans, Inc.
J. W. FORBES,
JOHN T. COX,
C. C. SEDGWICK,
EUGENE COLVER.

STATE OF VIRGINIA,
City of Richmond, To-wit:

I, A. L. Boulware, a notary for the corporation aforesaid, in the State of Virginia, do hereby certify that the above named parties, except James W. Jones, this day appeared before me in my City and made oath that the above writing, so far as they knew of their own knowledge was true, and so far as they knew of the knowledge of others, they believe to be true.

My commission expires April 3rd, 1911

A. L. BOULWARE,
Notary Public.

DISTRICT OF COLUMBIA,
County and City of Washington, ss:

This day personally appeared before me, the undersigned, a notary public in and for the District of Columbia aforesaid, James W. Jones, and being by me duly sworn, says that the statements contained in paragraphs 1, 2, 4, 5, 7, 8, 9, 10, 11 and 12 of the foregoing answer, and to which he has subscribed his name, are to his own
79 knowledge true and those contained in the other paragraphs of said answer he believes to be true.

In testimony whereof, I have hereunto set my hand and official seal this fifth day of April, in the year 1907.

[SEAL.] ABRAHAM B. KEEFER,
Notary Public, D. C.

And at another day, to-wit: At a Court of Chancery for the City of Richmond, continued by adjournment, and held at the court-room thereof, in the City Hall in said city, on the 15th day of April, 1907.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, Plaintiffs,

v.

NATIONAL COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA and Others, Defendants.

This cause came on this day to be again heard upon the papers formerly read, upon the petition of the plaintiff duly filed on February 20th, 1907, and the exhibits therewith, and upon the motion of the defendants, J. W. Forbes, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver, for leave to file their joint and separate answer to said petition, which said answer is duly sworn to, and upon the motion of Thomas Tatum Osborne, Jno. H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings and E. G. Williams, by counsel, for leave to file their joint and separate answer to said petition, which said answer adopts the first mentioned answer, as their own, upon the motion to file the affidavit of C. V. Meredith, and the affidavit of J. W. Jones as to W. W. Sawyer, not having qualified as an officer or a member of the corporation known as the Virginia Branch Junior Order of United American—, which motion for filing said papers were granted, and the same were accordingly filed; and thereupon the said petitioners moved the court to continue the hearing of the rule awarded in this cause on the 20th day of February, 1907, and by successive adjournments continued until this day, until to-morrow morning at eleven o'clock. Whereupon the said rule is extended as prayed for.

Affidavit Filed in Court Under Decree April 16th, 1907.

VIRGINIA, *City of Richmond, To-wit:*

This day personally appeared before me, the undersigned,
80 J. W. Jones, J. W. Forbes, C. C. Sedgwick, E. Colver, and B. D. White, who, being duly sworn, say, that they were each present at the meeting of the Alexandria State Council Jr. O. U. A. M. which was held at Alexandria on the 7th day of December, 1906, and that the resolutions set forth in the affidavit of Davis Bottom, sworn to on the 16th day of April, 1907, were not offered nor adopted as set forth in said affidavit, but that the only resolution or resolutions adopted at the said meeting were those set forth in the answer filed in these proceedings. Affiants further say that no such resolution or resolutions were adopted by or at any meeting held by the said loyal councils after the adjournment of said Alexandria State Council.

JAMES W. JONES,
J. W. FORBES,
C. C. SEDGWICK,
EUGENE COLVER,
B. D. WHITE.

Subscribed and sworn to before me this 16th day of April, 1907.

WM. S. WOODSON,
Deputy Clerk of the Chancery Court
of the City of Richmond, Va.

Paper Marked "P" (to be Filed with the Paper Marked "Circular").
Filed in Court Under Decree April 16, 1907.

(Copy.) ROOM NO. 738, CITY P. O. BLDG.,
WASHINGTON, D. C., *January* 16, 1907.

To the Executive Board, State Council of Virginia, Junior Order United American Mechanics.

DEAR SIRS AND BROTHERS: This proposition is submitted to your Board with request that a definite answer be furnished by Saturday, January 26, 1907. Should no answer be received by that time, other steps are contemplated.

Recognizing that it is essential that the two sections of what formerly constituted the Junior Order United American Mechanics of Virginia should be united, and that now is probably the best opportunity that will be presented, it is suggested that it can be done on the following honorable and equitable basis:

1. No member of either faction shall be barred.
2. All past officers, State and local, of both factions, shall be recognized.
3. The last elected State Councilor of each faction shall be considered Junior Past Councilors, each a member of the State Board, and entitled to one-half of a vote.
4. The last elected State Vice-Councilor of each faction shall be made State Councilor and State Vice-Councilor of the reunited organization, as may be determined.
5. All other officers shall be equally divided, to hold until the next election.
6. The reunion shall be made effective as soon as all of both factions become a part of and loyal to the National Council.
7. The National Council to admit the faction operating under a charter granted by the State of Virginia in 1900, upon the payment of no fee, the only condition being that the per capitation tax shall be paid by the reunited Order, as it may become due.

This proposition is submitted in the best of spirits, acknowledging no weakness and insinuating none, and it is to be hoped it will receive the consideration it deserves.

Fraternally,

JAMES W. JONES,
C. C. SEDGWICK,
EUGENE COLVER,
Committee.

Affidavit of Davis Bottom, Filed in Court Under Decree of April 16, 1907.

Whereas, through certain differences in the Jr. O. U. A. M. of Virginia, it became necessary for certain members of the Order in this State constituting a State Council to withdraw its allegiance to the National Council Jr. O. U. A. M. and to set themselves up as a separate and distinct organization; and

Whereas, said seceding members did on or about the 17th day of February, 1900, procure from the General Assembly of Virginia a charter for a State Council of Virginia, Jr. O. U. A. M., of the State of Virginia, embracing all members of the said State Council, thus making it the supreme head of the Jr. O. U. A. M. of Virginia and giving it full and exclusive authority and jurisdiction to grant charters to subordinate Councils and to revoke the same for cause; and to make such constitution, by-laws and rules of the Order as it might deem just and proper for the government of subordinate Councils; and

Whereas, thereafter said charter State Council instituted suit for injunction against the National Council and others—such as organganized this State Council—in the Chancery Court of the City
82 of Richmond, which court on the — day of July, 1904, in its opinion sustained the validity of such charter; and

Whereas, the National Council *et als.*, did appeal from such decision to the Supreme Court of Appeals of the State of Virginia, and the said court on the 15th day of June, 1905, rendered an opinion affirming the decree of the Chancery Court, but modified the same by saying that "there is nothing in the charter or of the decree of the court below that affects any rights that may have accrued prior to the grant of the charter of February 17th, 1900; thereby leaving the whole order of things as they existed with respect to the Jr. O. U. A. M. of Virginia unaffected, and all rights of persons and property which had been acquired under said Jr. O. U. A. M. undisturbed and unaffected, except that it declared that the corporation created by the act shall have full and exclusive authority and jurisdiction to grant charters to subordinate Councils in the State of Virginia; and

Whereas, the National Council further desiring to contest its rights and powers in the premises appealed from the decision of the said Supreme Court of Appeals of Virginia to the Supreme Court of the United States, to reverse the decree of the said court; and said cause coming on for hearing was duly *argued* and submitted, and on the 19th day of November, 1906, the Honorable Justice Holmes, speaking for the Court, delivered an opinion upon the constitutionality of the charter granted and affirmed the decree of the court below without modification to any material extent; and said chartered State Counsel standing upon said chartered rights they have prevailed, which confers upon them powers and attributes ordinarily incident to a corporation.

Therefore, acting upon information and advice of the attorneys on behalf of the National Council, be it

Resolved, 1. That in view of the foregoing and the injunctions of

the court issued, or which may be isued, that the charter issued by the National Council, Jr. O. U. A. M., under date of —— ——, authorizing and empower- (22, 26, 33, 43, 46, 51, 61, 73, 75, 85; 87, 97, 101, 109, 124, 132, 138, and their successors) to be known as the State Council of Virginia; and whereby this State Council was instituted March 2, 1901, that such charter is hereby surrendered and returned to the National Council and to become effective December 18. (Adopted.)

Resolved, 2. That this State Council composed of subordinate Councils Nos. (here insert all loyal Councils) representing the loyal branch of the National Council of the Jr. O. U. A. M. in the State of Virginia recognize the supreme law of the land, and without any desire to evade its injunctions do therefore take this action that the court's findings may be carried out. (Adopted.)

83 Resolved, 3. That the Executive Board of this State Council representing the loyal Councils of the State of Virginia, with full and exclusive authority to apply for a charter from the courts of this State, with objects similar to those advocated by the National Council; that the name under which such persons shall ask to be chartered should be "Virginia Branch of the National Organization of the Junior Order of United American Mechanics," or such other name as such committee and the attorneys advising or assisting in procuring such charter shall suggest, and that application for such charter be applied for before such judge as such committee may deem proper. (Adopted as amended.)

Resolved, 4. That in such charter said committee should not ask for the power to create subordinate Councils, but it should contain a provision giving power to the corporation to recognize and declare under such terms and according to such bylaws as the organization may pass, as members or parties to the new organization, such subordinate Councils of the Jr. O. U. A. M. as were in existence prior to February 17, 1900. (Adopted.)

Resolved, 5. That said charter committee be and they are hereby authorized to consult such lawyer or lawyers as to the provisions of the proposed charter; and that the cost incident to the procuration thereof be paid for out of any monies in the hands of those to whom they may be entrusted upon the passage of these resolutions. (Adopted.)

Resolved, 6. That a copy of these resolutions be forwarded to the National Councilor with the charter of this State Council on December 18, 1906. (Adopted.)

Resolved, 7. That upon the passage of these resolutions this State Council shall be dissolved. (Rejected.)

Fraternally submitted in V. L. and P.,

(Signed) JAS. R. MANSFIELD, *P. S. C.*

Resolved, That while the course forced upon by the result of the litigation, as outlined in the preamble and resolution, and this State Council deeming it imperative to dissolve its organization as a State body, it is the wish and desire of those here represented that all Councils who have pledged their loyalty and integrity to the National Council may yet be brought under its control, and would urge such

Councils to still maintain its allegiance to the supreme head of the Order—the National Council—feeling that the interest of such Councils which have stood by the National Council, will be carefully and conscientiously safeguarded in all things pertaining to their future existence, and that it is confidentially believed that
84 the National Council will endeavor to prevent any disastrous effect upon the loyal Councils.

(Signed) JAS. R. MANSFIELD.

Adopted.

CITY OF RICHMOND, *State of Virginia, To-wit:*

I, W. W. Dunford, a notary public in and for the City of Richmond, Va., do certify that Davis Bottom this day appeared before me in my said city and made oath that some time in the month of December, 1905, very soon after the meeting of what is known as the Alexandria State Council, Jr. O. U. A. M., the foregoing resolutions were furnished him as correct copies of resolutions adopted by said Alexandria State Council, and that according to the best of his knowledge, information and belief, they are correct copies of resolutions adopted by said Alexandria State Council.

Given under my hand this 16th day of April, 1907.

W. W. DUNFORD,
Notary Public.

My commission expires July 9th, 1910.

And at another day, to-wit: At a Court of Chancery for the City of Richmond, continued by adjournment and held at the court-room thereof, in the City Hall in said city, on the 16th day of April, 1907.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA

v.

NATIONAL COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA and Others.

This day came again the plaintiff and the defendants to the rule awarded in this cause on the 20th day of February, 1907, in pursuance of the adjournment of yesterday, and the court thereupon proceeded to the consideration of the said rule; and

On motion of plaintiff by counsel the affidavit of Davis Bottom and the paper marked "P" is ordered to be filed among the papers of this proceeding, and on motion of the defendants the affidavit of James W. Jones, J. W. Forbes, C. C. Sedgwick and Eugene Colver and B. D. White is ordered to be filed among said papers, which was accordingly done. And now this said rule coming on this day to be heard on the affidavits and papers formerly and this day filed and orders heretofore entered and read, and the arguments of counsel, and the argument not being completed,
85 this proceeding is continued until to-morrow at 11 o'clock A. M. for further argument.

And at another day, to-wit: At a Court of Chancery for the City of Richmond, continued by adjournment and held at the court-room thereof, in the City Hall in said city, on the 17th day of April, 1907.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA

v.

NATIONAL COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA and Others.

This day came again the plaintiff and the defendants to the rule awarded in this cause on the 20th day of February, 1907, in pursuance of the adjournment of yesterday; and it appearing that one of the counsel for plaintiff is prevented by sickness from proceeding with the argument, it is ordered that this rule be enlarged and continued until the 25th day of April, 1907, at 11 o'clock A. M.

And at another day, to-wit: At a Court of Chancery for the City of Richmond, continued by adjournment and held at the court-room thereof, in the City Hall in said city, on the 25th day of April, 1907.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA

v.

NATIONAL COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA and Others.

This day came the plaintiff and the defendants by counsel to the rule awarded in this cause on the 20th day of February, 1907, and was further argued by counsel.

On consideration whereof and the papers formerly read and considered, the court discharges said rule as to W. W. Sawyer, but continues and enlarges the same until the 6th day of May, 1907, at 11 o'clock A. M. as to all of the other defendants to said rule, to-wit: J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings and E. G. Williams.

86 And at another day, to-wit: At a Court of Chancery for the City of Richmond, continued by adjournment and held at the court-room thereof, in the City Hall in said city, on the 6th day of May, 1907.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA

v.

NATIONAL COUNCIL OF THE JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA and Others.

This day came again the plaintiff and the defendants to the rule awarded in this matter on the 29th of February, 1907. And it appearing to the court that C. V. Meredith, of counsel for defendants, is engaged in the trial of a case in the Law and Equity Court of the City of Richmond, it is ordered that said rule be further enlarged and continued until the 8th day of May, 1907, at 10 o'clock A. M.

And at another day to-wit: At a Court of Chancery for the City of Richmond, continued by adjournment and held at the court-room thereof, in the City Hall in said city, on the 8th day of May, 1907.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA

v.

NATIONAL COUNCIL OF JUNIOR ORDER OF UNITED AMERICAN MECHANICS OF THE UNITED STATES OF NORTH AMERICA and Others.

This day came the State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, petitioner, upon whose application a rule was issued on the 29th day of February, 1907, against J. W. Forbes and others, defendants to said rule, summoning them to appear before this court on Tuesday, the 13th day of March, 1907, at eleven o'clock A. M., to show cause, if any they could, why they should not be fined and imprisoned for a contempt of this court in disobeying, disregarding and evading the decree of this court rendered on the 21st day of July, 1904, as affirmed by the Supreme Court of Appeals of Virginia and the Supreme Court of the United States, which rule has been continued from time to time until this day by orders herein entered. And on this day also came the defendants named in said petition and rule, to-wit: J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings and E. G. Williams, being all of the defendants named in said petition, except W. W.

87 Sawyer, against whom, to-wit, the said W. W. Sawyer, the said rule has been heretofore dismissed by an order entered by this court on the 25th day of April, 1907. And the said matter of the said petition and of said rule thereupon came on this day to be heard upon all the papers and decrees in the cause of "State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, against National Council of Junior Order of United American Mechanics of North America and others," and on the said petition filed in this court on the 20th day of February,

1907; and on the various orders and decrees of this court filing said petition and enlarging and continuing the said rule from time to time until this day; and upon the printed circular bearing date January 29th, 1907, marked on the back "Circular;" and upon the typewritten paper bearing date January the 16th, 1907, marked on the back "To be filed with paper marked 'Circular;'" and upon the paper filed February the 20th, 1907, marked on the back "Charter;" and upon the affidavit of Davis Bottom, marked on the back "Affidavit, filed on April 16th, 1907;" and upon the joint and separate answer to said petition of J. W. Forbes, John T. Cox, J. W. Jones, C. C. Sedgwick and Eugene Colver filed herein on the 15th day of April, 1907; and on the joint and separate answer of Thomas Tatum Osborne, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings and E. G. Williams, by counsel, filed on April 15th, 1907, to the aforesaid petition, by which the said respondents adopt as their answer to said petition the answer of J. W. Forbes, John T. Cox and J. W. Jones and others to said petition; and upon the affidavit of C. V. Meredith, filed on the 15th day of April, 1907; and upon an affidavit of James W. Jones, J. W. Forbes, C. C. Sedgwick, Eugene Colver and B. D. White, subscribed and sworn to and filed herein on April 16th, 1907; upon the letter of Lee B. Kellam, sheriff, dated February 26, 1907, and upon the affidavit of J. W. Jones, filed April 15, 1907.

And the matter of the said rule having been fully argued by counsel, and maturely considered by the court, the court doth adjudge, order and decree that the respondents to said petition, viz: J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings and E. G. Williams, have, and each of them has, disregarded and disobeyed the decree of this court, entered on the 21st day of July, 1904, which has been heretofore affirmed by the decree of the Supreme Court of Appeals of Virginia and by the Supreme Court of the United States, in the following respects, viz: In disobeying the requirements of the act of the General Assembly of Virginia, passed on February 17th, 1900, the constitutionality and validity whereof is adjudged
88 by the decree of this court on the 21st day of July, 1904; and in disobeying the decree of this court declaring and adjudging that the plaintiff, by its corporate name of the State Council of Virginia, Junior Order of the United American Mechanics of the State of Virginia, is the supreme head of the Junior Order of the United American Mechanics in the State of Virginia, and in said State of Virginia has the power to make constitutions, laws, by-laws, rules and regulations as shall be necessary for its government, and shall have in the State of Virginia full and exclusive authority and jurisdiction to grant charters to subordinate Councils Junior Order United American Mechanics in the State of Virginia, with power to revoke the same for cause, and to make such constitutions, by-laws and rules of order as it may deem just and proper for the government of subordinate Councils, and that its officers shall be such as it may deem necessary, and shall be elected at such times

and places and in such manner as its rules and by-laws may prescribe; and also in disobeying so much of said decree as adjudged and ordered that the National Council of the Junior Order United American Mechanics of the United States of North America and the other defendants to said suit should be, jointly and severally, enjoined from continuing the use within the State of Virginia of the name "State Council of Virginia, Junior Order of United American Mechanics of the State of Virginia," or any other name of like import likely to be taken for that of the plaintiff; and in disobeying so much of said decree as enjoined the carrying out within the State of Virginia under the name of the plaintiff, or any other name of like import, any of the objects for which the National Council of the Junior Order of United American Mechanics of the United States of North America, or the said voluntary association, were organized; or in using in Virginia the name of the plaintiff, or any other name of like import, in the pursuit of the objects for which the said plaintiff was chartered, and, under the name of the plaintiff, or any other name of like import, granting charters to subordinate Councils in Virginia, and representing themselves to subordinate Councils in Virginia as head of said Order in Virginia; and interfering in Virginia in any way with the pursuit by the plaintiff of its objects and purposes within the State of Virginia; and in disobeying so much of said decree as prohibited the National Council and the said voluntary association, their agents and officers, from designating their officers in the State of Virginia by the appellations set forth in the plaintiff's bill for its officers and agents, and continuing the use in the State of Virginia of said appellations.

89 And this court, desiring to compel obedience to said decree, doth adjudge, order and decree that the persons above named, to-wit: J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings and E. G. Williams, be, and they hereby are, fined the sum of twenty dollars each; and the same shall be paid by them, respectively, to the clerk of this court within 35 days from this date, and, in default of such payment, each of said persons shall stand committed to the custody of the sheriff of this city to remain in jail until said sums be paid by them, respectively.

And the defendants expressing an intention to apply for a writ of error from this decree, it is ordered that the execution of the same be suspended for sixty days upon their, or some of them, or some one for them, entering into a bond before the clerk of this court within 35 days with security, to be approved by said clerk, in the penalty of five hundred dollars, conditioned according to law.

And the court doth order that the plaintiff recover of the defendants in this rule its reasonable costs in this behalf.

Bill of Exceptions No. 1.

In the Chancery Court of the City of Richmond.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA

v.

NATIONAL COUNCIL JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE UNITED STATES OF AMERICA, and Others.

In the matter of the rule issued against J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings, E. G. Williams and W. W. Sawyer, to show cause why they should not be punished for contempt for violation or disobedience of the decree of said court in said cause, entered on the 21st day of July, 1904.

Be it remembered that after all the pleadings and evidence set forth in Bill of Exceptions No. 3, which is here referred to, as if set forth herein, had been before the court for consideration, the respondents to said rule moved the court to designate what words in the name given in the charter of the "Virginia Branch Junior
90 order United Americans," were objectionable or deemed by the court as making such a name a name of like import with that of the plaintiff, so that the said respondents might take proper steps to remove such objection. Thereupon the court said in substance to the counsel that the court thought that "any charter containing the words 'Junior Order' would be;" whereupon the counsel for the plaintiff urged the court not to indicate by the omission of what words the name would be unobjectionable—that the court was not called to pass upon any name except the one before the court—that in taking any other name the defendants ought to do so at their own risk. At that time the court said nothing more upon the subject. Subsequently upon the presentation of the draft of the order, which the plaintiff asked would be entered, the counsel for the defendants again moved the court that it would suggest what words in said name were objectionable, so that the defendants might know what to avoid in any future course, which might be adopted by them; whereupon the court declined so to do, and said that it did not think that it should do anything but pass upon the name then before it, and declined to modify said draft in that respect.

To which ruling of the court the respondents except, and pray that this their 1st Bill of Exceptions may be signed and sealed, which is accordingly done.

DANIEL GRINNAN. [SEAL.]

Bill of Exceptions No. 2.

In the Chancery Court of the City of Richmond.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA

v.

NATIONAL COUNCIL JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE UNITED STATES OF AMERICA, and Others.

In the matter of the rule issued against J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colvert, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings, E. G. Williams and W. W. Sawyer, to show cause why they should not be punished for contempt for violation or disobedience of the decree of said court in said cause, entered on the 21st day of July, 1904.

Be it remembered that after all the pleadings and evidence set forth in Bill of Exceptions No. 3, which is here referred to
91 as if set forth herein, had been before the court for consideration, the respondents to said rule moved the court to state in its order whether by the decree of July 21st, 1904, the respondents were prohibited from associating or incorporating themselves under any name whatever, and advocating the objects set forth in the charter complained of in the petition of the plaintiff in this proceeding. But the court refused to so state in said order, to which ruling of the court the respondents except, and pray that this their 2nd Bill of Exceptions may be signed and sealed, which is accordingly done.

DANIEL GRINNAN. [SEAL.]

Bill of Exceptions No. 3.

In the Chancery Court of the City of Richmond.

STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA

v.

NATIONAL COUNCIL JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE UNITED STATES OF AMERICA, and Others.

In the matter of the rule issued against J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Colver, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings, E. G. Williams and W. W. Sawyer, to show cause why they should not be punished for contempt for violation or disobedience of the decree of said court in said cause, entered on the 21st day of July, 1904.

Be it remembered that upon the hearing upon the rule issued against J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W.

Jones, C. C. Sedgwick, Eugene Colver, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings and E. G. Williams and W. W. Sawyer, to show cause why they should not be punished for contempt for violation or disobedience of the decree of said court in said cause, entered on the 21st day of July, 1904; the same was heard upon the petition of the State Council of Virginia of the Junior Order United American Mechanics, the exhibits therewith filed, the rule issued thereon, the affidavit of Davis Bottom, the answer of J. W. Jones, J. W. Forbes, John T. Cox and C. C. Sedgwick and the exhibits therewith filed, the joint and several answers of Thos. Tatum Osborne, Eugene Colver, John H. Trimyer, J. E. Boehm, B. B. Bott, G. D. Baker, W. H. Cummings and
92 E. G. Williams, and the affidavit of J. W. Jones, J. W. Forbes, C. C. Sedgwick, Eugene Colver and B. D. White, and any other paper referred to in the order of May 8th, 1907, which said papers, being all the pleadings and evidence before the court, are respectively in the words and figures following, to-wit:

MEMORANDUM.—The papers above referred to are not here recopied, as they have already been heretofore copied, and by agreement of counsel, in order not to uselessly enlarge the record, the clerk has been instructed by counsel for both sides not to recopy said papers, counsel having agreed that, if the Supreme Court should desire said papers to be restated, the same may be hereafter copied and printed as a part of the record.

That after argument by counsel the court entered the following order:

MEMORANDUM.—The said order of May 8th, 1907, is not here recopied for the same reasons as those above stated as to the other papers, and under the same agreement of counsel.

To the entry of which order the said defendants objected, and moved that the same be set aside and rescinded, but the said objections and motions were overruled and denied, and thereupon the said defendants excepted to the entry of said order and to the refusal of the court to set aside and rescind the same, and prayed that this, their bill of exceptions, might be signed and sealed, which is accordingly done.

DANIEL GRINNAN. [SEAL.]

MEMORANDUM.—The court certifies that no exception was taken to any ruling of the court, except as to its refusal to make certain additions to its order, as set forth in Bills of Exceptions Nos. 1 and 2, and as to its ruling as set forth in Bill No. 3.

DANIEL GRINNAN. [SEAL.]

I accept notice of application for a writ of error in this proceeding.

S. A. ANDERSON,
Of Counsel for Petitioner.

May 23, 1907.

I, Charles O. Saville, clerk of the Chancery Court of the City of Richmond, hereby certify that the foregoing is a true tran-
93 script of so much of the record as was ordered by counsel, and that notice in obedience to section 3457, Code of Virginia, 1887, has been duly given.

CHAS. O. SAVILLE, *Clerk*.

Fee for transcript of record, $25.20.

A copy—Teste:

H. STEWART JONES, *C. C.*

94 VIRGINIA:

In the Supreme Court of Appeals, Held at the Library Building, in the City of Richmond, on Thursday, the 16th Day of January, 1908.

J. W. FORBES, THOMAS TATUM OSBORNE, JOHN T. COX, J. W. JONES, C. C. SEDWICK, EUGENE COLVER, JOHN H. TRIMYER, J. E. BOEHM, B. B. BOTT, G. D. BAKER, W. H. CUMMINGS and E. G. WILLIAMS, Plaintiffs in Error,

against

STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, Defendant in Error.

Upon a writ of error and supersedeas to a judgment rendered by the Chancery Court of the City of Richmond on the 8th day of May 1907, in a proceeding for contempt.

This day came again the parties, by counsel, and the court having maturely considered the transcript of the record of the judgment aforesaid and arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that the writ of error in this case was improvidently awarded.

It is therefore considered that the same be dismissed and that defendant in error recover of the plaintiffs in error its costs by it about its defence herein expended.

Which is ordered to be certified to the said Chancery Court.

A copy.

Teste:

H. STEWART JONES, *C. C.*

95 In the Supreme Court of Appeals of Virginia, at Richmond.

FORBES ET ALS.

v.

STATE COUNCIL JUNIOR ORDER UNITED AMERICAN MECHANICS OF VIRGINIA ET ALS.

Petition for Rehearing.

To the Honorable Judges of the Supreme Court of Appeals:

Your petitioners, the appellants in the above styled cause, pray that your honors will grant them a rehearing in this cause from the judgment entered therein on the 16th day of January, 1908. The grounds for this petition are as follows:

It is respectfully insisted that the court erred in holding that your petitioners did not deny the jurisdiction of the trial court in the contempt proceedings. The jurisdiction was denied upon the ground, that the decision of the State Corporation that the name, "Virginia Branch Junior Order United Americans," was not a name of like import to that of the appellee, was final and conclusive, unless appealed from as provided in Section 3454, Code of Virginia 1904, which reads as follows:

"Any person who thinks himself aggrieved by any final order, judgment, or finding of the State Corporation Commission, irrespective of the amount involved, except the action of the said
96 Commission in ascertaining the value of any property or franchise of a railroad or canal company."

This question was fully discussed in the petition for a writ of error from this court, and authorities in support of it were cited.

It is again asked that this question may be considered by this court.

It is also submitted that even if this court shall hold to its judgment, that it is without jurisdiction to review the order of the Chancery Court, yet that it will, in response to the prayer of your petitioners in their petition for a writ of error, at least inform them what is the scope and extent of the decree of this court; whether or not it meant, that the appellants were only enjoined from using a name of like import to that of the appellee—or was enjoined from organizing under and using any name whatever if they affiliate with the National Council, Junior Order United American Mechanics.

In said petition were cited many authorities holding that a party has a right to ask a court as to the meaning and scope of an injunction order. Among those decisions was that of the *Balt. & Ohio Ry. Co. v. City of Wheeling*, 13 Gratt.

Surely there can be no doubt as to the right of a party under such circumstances to ask a court for an interpretation of its decree. Nor can there be any doubt as to the justice of such a principle. The only question that can be raised is whether that request can be granted where the cause is dismissed for lack of jurisdiction. The only other method that can be adopted is by an independent motion.

Hence the question of procedure is but a question of form. If such be the case, it is respectfully submitted that this court has the right and power in this procedure to announce what is the true scope of its decree, which amended the decree of the Chancery Court. And your petitioners pray that you will grant them that relief in this cause.

It is further respectfully submitted that this court erred in dismissing this cause upon the ground that by Section 4053 of the Code 1904, which reads "To a judgment for a contempt of
97 court, other than for the non-performance of, or disobedience to, a judgment, decree, or order, a writ of error shall be to the Supreme Court of Appeals," this court is prevented from having jurisdiction in this cause. Your petitioners offer two reasons for their relief.

1st. Because by *Wells case*, 21 Grat., 500, those words were clearly and expressly construed, without regard to the facts of the particular case, and held not to apply to a disobedience or contempt like the one alleged in this cause.

There it was said, "It embraces only such cases as were excluded from the operation of the writ of error, by the 9th section of chapter 24 of the Acts of Assembly of 1847-8, by the words, 'any proceeding by attachment to compel the performance of any decree or judgment, or to enforce obedience thereto.' * * * To all other judgments for contempt a writ of error will lie."

2nd. Because, if said section be as broad as your honors have declared, then it is unconstitutional and void, so far as this case is concerned, as attempting to deprive your petitioners of a right to a writ of error, given them by section 88 of the Constitution of Virginia, which declares that this court "shall by virtue of this Constitution, have appellate jurisdiction in all cases involving the life or liberty of any person."

In noticing this contention in your opinion your honors say:

"The judgment complained of does not deprive them of life or liberty. It imposes a fine, and they are given a reasonable time within which to pay it; and it is only in the event of their failure or refusal to pay it that they are to be committed to jail. The imprisonment then would be, not the direct result of the judgment of the court, which by its terms imposes a fine upon plaintiffs in error for their disobedience to a lawful decree of the court. The language of the Constitution is not broad enough to cover the case before us. It applies to every judgment involving the life or liberty
of any person, but by force of the very terms employed ex-
98 cludes from its operation judgments which do not, by their own terms, involve life or liberty."

Your petitioners respectfully insist that your honors erred in holding that such circumstances did not involve the liberties of your petitioners.

It is evident from the above language, that it was held that even if the fines were not paid and your petitioners were imprisoned under said order that their liberties would not be involved under said order—but their incarceration would be either voluntary or

their own fault. It is in that that your petitioners submit that your honors erred.

Let it be remembered that it is definitely settled in this State that a proceeding for a contempt is a *criminal* proceeding. As was shown in the petition for a writ of error, the statutes of this State from its early days prove such to be its nature. It was expressly so held in *Balt. & Ohio Rd. Co. v. City of Wheeling*, 13 Grat., 40, which involved a contempt like the one alleged in this case for the disobedience of an injunction order.

Remembering that it is a criminal proceeding, it is evident that the court followed exactly the course authorized in ordinary criminal prosecutions for misdemeanors by section 726, Code 1904, which reads:

"The court in which any judgment for a fine is rendered, going, in whole or in part to the Commonwealth, or for a fine going, in whole or in part, to any city or incorporated town upon appeal taken from the decision of the mayor, &c., &c., may of its own, or at the instance of the attorney for the Commonwealth, commit the defendant to jail until the fine and costs are paid." It also provides for the issuance of a *capias pro fine*.

For what reason are appeals allowed from such judgments except that they involved one's liberty. It was never suggested that by such judgments one's liberty was not involved—and that if one went under any such judgment to jail, he either went voluntarily or through his own fault—and that all that the court had done was to impose a fine. Surely it has always been recognized that all such judgments involve one's liberty. It has only been upon that ground that appeals have been allowed from convictions for misdemeanors or violations of city's ordinances.

99

No more striking proof of this can be found than in *Wells's case* lately before this court as to a violation of the statute as to the Sabbath. Not only was an appeal allowed—but, although this court held that it was not a criminal statute, the party was released from so much of the order as proposed to imprison him for a failure to pay the fine.

Case after case has arisen in the several States in which it has been claimed that the courts had no power to imprison for failure to pay a fine, as it would amount to imprisonment for debt. Yet the courts have almost unanimously denied the claim, upon the ground that a fine is a punishment and that imprisonment is for its enforcement. If such ruling be correct, and they can not be doubted, that the imprisonment is a part of the punishment, not assumed by the party, but imposed by the court and hence that the judgment of the court clearly involved one's liberty. 19 Ill., 613; *Kennedy v. People*, 122 Ill., p. 653.

This view agrees with the usual meaning of the word "involve." Webster says that the word means, "to connect by way of natural consequence or effect." The Standard Dictionary says, "have as a result or logical consequence."

The Century Dictionary says, "to bring into a common relation or connection."

Your petitioners respectfully insist that the court has put upon the word "involve" too restricted a meaning—certainly when applied to one's liberty.

The Constitution of the United States does not use as broad a word as the word "involve"—It declares "nor shall any State *deprive* any person of life, liberty or property without due process of law."

The same words are used in the fifth amendment to the
100 same Constitution, when treating of criminal prosecutions.

The Supreme Court has held that the words mean the same in both amendments. *Hustado v. California*, 110 U. S., on pp. 534-5.

It would be useless to cite to this court the many cases from the Supreme Court of the United States declaring the broad meaning to be given to those words. It has held that neither the word "*deprive*" nor the word "*liberty*" is to be given such a restricted meaning as to apply only to physical restraint.

This court itself has passed upon that question. In *Young's case*, 101 Va., on p. 862-3, this court says:

"The word liberty as used in the Constitution of the United States and the several States has frequently been construed, and means more than mere freedom from restraint. It means not only the right to go where one chooses, but to do such acts as he may judge best of his interest, not inconsistent with the equal rights of others." &c., &c., &c.

Remembering that this is a criminal proceeding, can there be any doubt, but that the same broad meaning is to be given to the word "liberty" which has been given to it in civil cases.

Your petitioners, after a diligent search, have been unable to find any authority construing exactly the words here involved. But they submit that by analogy the construction put by this court upon said words contradicts several well-known principles of law.

In *Greene v. Biggs*, 1 Curtis 311, Judge Benj. R. Curtis, says on p. 325:

"To require security for the payment of the penalty and costs, as a condition for having a trial, so far as I am informed, is a novelty in criminal jurisprudence; and in my opinion, it is not only essentially unjust, but in conflict with that clause of the Constitution which secures the accused from being deprived of his life, liberty or property, unless by the judgment of his peers, or the law of the land."

101 He further said:

"For it would treat the innocent, who are unable to furnish the required security, as if they were guilty, and would punish them, while still presumed innocent for their poverty, or want of friends."

He further said on p. 326:

"A condition, which would impair his right to any trial, if prescribed as the condition of his having any, impairs his right to this trial, if prescribed as a condition for his having it."

Is it not then true that any condition or requirement, which would impair one's right to liberty, if prescribed as the condition of the enjoyment of liberty, would impair or involve his right to liberty, if prescribed as a condition for his having liberty."

On p. 327, he says:

"If this were not so, there would be no limit to legislative control over this right; for if one onerous condition may be imposed, so may any number, until the right becomes so difficult of attainment that it ceases to be a common right and can be enjoyed only by a few."

The construction proposed by your honors is contradictory of the principle of "Former Jeopardy." One need not have been convicted to make such a plea. It will lie whenever his liberty has been imperilled upon a valid indictment. *Ex parte Ulrich*, 42 Fed., 587; *ex parte Lange*, 18 Wall., 168-9, 92 S. W., 151.

The principle as to former jeopardy arose out of the principle that no man shall be punished twice for the same offence. The law recognized that it was not right to require an actual conviction, but that it was sufficient if his liberty was put in danger. *Ex parte Lange*, 18 Wall, on p. 169.

The writ of *habeas corpus* is only issued where one is in-
102 voluntarily and actually imprisoned, "The great object of which is the liberation of those who may be imprisoned without sufficient cause." 21 Cyc. p. 282. Yet it has been unhesitatingly issued in proper cases where one is in prison for the refusal to pay a fine imposed for contempt, and for misdemeanors.

In *ex parte Curtis*, 106 U. S., 371, the party was convicted of a misdemeanor. "Upon his conviction he was sentenced to pay a fine, and stand committed until payment was made." A writ of *habeas corpus* was issued. The Supreme Court of the United States did not say that his liberty was not involved—that the court had only imposed a fine—and that if he was in prison he was there voluntarily or through his own act. It considered his conviction, and only after holding the statute valid, did it remand him.

In *ex parte Rowland*, 104 U. S., 604, the judgment *in a contempt case* was to pay a fine and costs, and to stand committed until they were paid. They were not paid and he went to jail. He was released on *habeas corpus*. The writ would not have been issued if he had been considered as going to jail *voluntarily* or through his own fault.

In *ex parte Fisk*, 113, U. S., p. 713:

Fisk, for refusing to answer certain questions, was "fined $500.00 and committed to the custody of the Marshall until it was paid." p. 715. He was released on *habeas corpus*.

It is manifest that the court regarded the imprisonment as the result of the court's order, and that through it, and from his refusal to pay, was his liberty involved.

In re Ayres, 123 U. S., 443, Ayres, for an alleged contempt of court in disobeying its order, was "fined the sum of $500.00, and stands committed in the custody of the marshall of this court until the same be paid and he purge himself of his contempt by dismissing said suit last hereinmentioned." He refused to pay the
103 fine, and was released upon a writ of *habeas corpus* issued by the Supreme Court of the United States.

See also *ex parte Ruskak*, 72 Fed., 11-21; *in re Savages*, 124 U. S., 200-209; *in re Tyler*, 149 U. S., 164-169.

Many cases to the same effect could doubtless be cited from the State Supreme Courts; but it would be useless. Surely those cases are sufficient to show, that not only a writ of error, but that even a writ of *habeas corpus*, ought not to be dismissed upon the ground that one's liberty is not involved—because one could pay the fine and end the matter.

Your petitioners further respectfully submit that the error of the court's construction of this constitutional protection becomes manifest, when the result of such construction is seen.

Suppose that the lower court had in this very case imposed, instead of a fine, a term of imprisonment, (which was within its power), could it be contended that our liberties would not have been involved, and that a writ of error could not have been issued by this court upon such an order. Surely not. Yet it would have been for exactly the same act, and from a judgment from the same court upon the same act. The only difference would be, that in one case there would be an actual imprisonment, while in the other a potential imprisonment, unless one surrendered his money in payment of a fine. Yet liberty would be involved under either order.

Can it be the law of this State, that, if for a contempt a judge orders one directly to jail, he can have a writ of error; but if he fines the same party for the same act, and further orders that if the fine be not paid he must go to jail, there can be no hearing in this court. Where is the justice or the reason for such a distinction?

Is there a difference in law, as to whether one's liberty is involved, between an order under which one *must* go immediately to jail, and one under which one *will have* to go to jail, unless one surrenders his money, it may be to a perfectly unjust judgment, and submit to the stigma of a judgment in a criminal proceeding.

104 When one is forced to buy his liberty is not his liberty *involved*. Is one's liberty involved only when it has been actually taken away, not when it is threatened to be taken away, and can only be saved by the payment of money under an order of court—it may be an unjust order.

Would not such a distinction under such circumstances be only a distinction in words, and not in actuality. The necessary result of such a distinction would be to give an unfortunate advantage to one class of citizens over others. Those, who can pay their fines, could save their liberty, which, it is said, would not be involved while those, who did not have the means to pay, would *necessarily* and not *voluntarily*, have to be imprisoned, although their liberty was not involved. See language of Judge Curtis, above quoted.

Your petitioners respectfully submit that this general principle of protection embodies in the organic law of the State, and usually so zealously guarded by the courts, ought not to be so construed as to work such a result. Surely it was never intended to do so.

In *Boyd v. U. S.*, 116 U. S., on p. 635, it is said

"Though the proceeding in question is divested of many of the aggravating incidents of actual search and seizure, yet, as before said, it contains their substance and essence, and effects their substantial purpose * * *. This can only be obviated by adhering

to the rule that constitutional provisions for the security of persons and property should be liberally construed."

Even "statutes giving the right of appeal are liberally construed in furtherance of justice." Suth. Stat. Con. ss. 440.

Such a construction would be clearly violative of the well-known principle of "Duress."

In *Brown v. Pierce*, 7 Wall., on p. 214, it is said: "Duress, in its more extended sense, means that degree of constraint or danger, either actually inflicted or threatened and impending, which
105 is sufficient, in severity or in apprehension, to overcome the mind and will of a person of ordinary firmness." See also *First Nat. Bk. v. Sargeant*, 59 L. R. Ann., 296-299.

"Duress by the government of its officers in this class of cases, is defined by the Supreme Court, as 'moral duress not justified by law.'"

Maxwell v. Griswold, 10 How. 242-256; *Water Co. v. Newburyport*, 103 Fed. 586-596; *Swift Co. v. U. S.*, 111 U. S., 22-28.

"In our judgment the payment of money to an official, as in the present, *to avoid an onerous penalty*, though the imposition of that penalty might have been illegal, was sufficient to make the payment an involuntary one. *Robertson v. Frank Bros., Co.*, 133 U. S., 17-24. Suppose that in this case the judgment is an unjust one, would not your petitioners pay their money under duress—under a threat involving their liberties—under a judicial threat, as it were. Surely one would have no opportunity to exercise his faculties or to determine for himself what are his rights. Whichever his choice, he must suffer under judicial power. One's liberty must be involved under such circumstances."

In *Johnson v. Tompkins*, 1 Baldw. (U. S. Rpts.) on pp. 601-2, it is said:

"His submission to the threatened and reasonably to be apprehended force is no consent to the arrest, detention or restraint of the freedom of his motion—he is as much imprisoned as if his person was touched, or force actually used." &c.

The construction, your petitioners submit, is opposed to every decision to any degree similar—to every analogous principle of law, and is not only not supported by any decision of any court, but is contrary to any judicial expression on the subject.

In *Hunley v. Commonwealth*, 188 Mass., on p. 445, the
106 court held that the words, "judgment in a criminal case" was broad enough to give it jurisdiction in a contempt proceeding.

In *Bullock &c. v. Westinghouse, &c.*, 63 C. C. A., 607, it held that a fine imposed in violation of an injunction order was embraced in these words "a judgment in a criminal case," as used in the United States statute giving the United States Circuit Courts of Appeal appellate jurisdiction. See also *Bessette v. Conkey Co.*, 194 U. S., 324; *State v. Bland*, 88 So. W. 28; 4 Ency. Plead & Prac. p. 811.

Your petitioners respectfully submit

1st. That upon the merits the order of the Chancery Court should be reserved and set aside.

2nd. That the Chancery Court had no power to dispute the right of the appellants to organize under and use the name of the "Virginia Branch of the Junior Order United Americans," as that name had been granted by the State Corporation Commission, and no appeal had been taken under Code 1904, section 3456.

3rd. That section 4053, Code of Virginia 1904, which reads: "To a judgment for a contempt of Court, other than for the non-performance of, or disobedience to, a judgment, decree or order, a writ of error shall lie to the Supreme Court of Appeals," authorizes a writ of error in this case.

4th. That, if the exception in said last quoted section applies to the proceeding in this case, it is in violation of section 88 of the Constitution of Virginia, which declares that this court "shall, by virtue of this Constitution, have appellate jurisdiction in all cases involving the life or liberty of any person."

5th. That, if the exception in said last quoted section applies to the proceeding in this case, it is in violation of the 14th Amendment of the Constitution of the United States which reads:

"Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within
107 its jurisdiction the equal protection of the laws;" in that it attempts to deprive your petitioners of the right to a writ of error from this court, as given by the said section 88 of the Constitution of Virginia above quoted, and thereby deprives your petitioners of their liberties without due process of law, and denies to them the equal protection of the laws.

6th. That a denial by this Honorable Court of the right of your petitioners to a writ of error under section 88 of the Constitution of Virginia will be in violation of said language of the 14th Amendment to the Constitution of the United States, in that it would deprive them of their properties and liberties without due process of law and would deny to them the equal protection of the laws.

Your petitioners respectfully pray that this court will grant them a rehearing in this cause, will hold that they were and are entitled to be heard in this court, and will grant them such relief as may appear right and proper from the record. And they will ever pray, &c.

J. W. FORBES,
AND THE OTHER APPELLANTS.
By Counsel.

MEREDITH & COCKE.
W. L. ROYALL.
R. D. WHITE.

108 VIRGINIA:

In the Supreme Court of Appeals, Held at the Library Building, in the City of Richmond, on Thursday, the 30th Day of January, 1908.

J. W. FORBES and Others, Plaintiffs in Error,
against
STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, Defendants in Error.

Upon a Petition to Re-hear.

On mature consideration of the petition of the plaintiffs in error to set aside the judgment entered herein on the 16th day of January, 1908, and to grant a re-hearing of said cause, the prayer of said petition is denied.

A copy.

Teste:

H. STEWART JONES, *C. C.*

109 VIRGINIA:

In the Supreme Court of Appeals, Held at the Library Building in the City of Richmond, on Monday, the 27th Day of January, 1908.

J. W. FORBES and Others, Plaintiffs in Error,
against
STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, Defendants in Error.

Upon a Petition to Re-hear.

This day came the plaintiffs in error, and moved the court to set aside the judgment entered herein on the 16th day of January, 1908, and grant a re-hearing thereof; but, because the court here is not yet advised of its judgment to be given in the premises time is taken to consider thereof.

A copy.

Teste:

H. STEWART JONES, *C. C.*

110 In the Supreme Court of Appeals of Virginia, at Richmond.

STATE OF VIRGINIA, *City of Richmond, To wit:*

I, H. Stewart Jones, Clerk of the Supreme Court of Appeals of Virginia, at Richmond, do hereby certify that the foregoing printed record contained in ninety three pages and one page of index thereto, thirteen printed pages containing petition for rehearing,

and three pages of additional manuscript, is a true and perfect transcript of the record in the case of J. W. Forbes and others against State Council of Virginia, Junior Order United American Mechanics of Virginia, remaining in the Clerk's Office of the said court at the city of Richmond, Virginia, upon which record the said case was heard, tried and determined by the court aforesaid.

In witness and attestation whereof I hereunto set my hand and affix the seal of said Court at Richmond, Virginia, on this 10th day of March, 1908.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

H. STEWART JONES,
Clerk Supreme Court of Appeals of the State of Virginia, at Richmond.

STATE OF VIRGINIA, *City of Richmond, To-wit:*

I, James Keith, one of the judges and president of the Supreme Court of Appeals of Virginia, do hereby certify that the attestation of the above record of J. W. Forbes and others against State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, remaining in the Clerk's Office of the said court at Richmond, Virginia, made by H. Stewart Jones, the clerk of said court at Richmond, is in due form.

Given under my hand this the 10th day of March, 1908.

JAMES KEITH,
President Supreme Court of Appeals of Virginia.

111 J. W. FORBES, THOMAS TATUM OSBORNE, JOHN T. COX, J. W. JONES, C. C. SEDGWICK, EUGENE CLOVER, JOHN H. TRIMYER, B. B. BOTT, J. E. BOEHM, G. D. BAKER, W. H. CUMMINGS and E. G. WILLIAMS,

vs.

THE STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA.

To the Honorable James Keith, President of the Supreme Court of Appeals of Virginia:

J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Clover, John H. Trimyer, B. B. Bott, J. E. Boehm, G. D. Baker, W. H. Cummings and E. G. Williams, plaintiffs in error come and file herewith their petition for a writ of error, and say there are errors in the record and proceedings of the above entitled cause, and make the following assignments of error.

The Supreme Court of Appeals of Virginia erred in holding that it had no jurisdiction to review the judgment of the Chancery Court of Richmond, Virginia, complained of in said proceedings, and in dismissing the writ of error allowed by said Supreme Court of Appeals of Virginia to said judgment of said Chancery Court of Richmond, Virginia, as appears in the order of the said Supreme Court of Appeals of Virginia, contained in the record hereto attached;

and in holding that the said judgment of the said Richmond Chancery Court does not involve the liberties respectively of the plaintiffs in error, or does not deprive them respectively thereof; and in holding that by reason of section 4053 of the Code 1904, it had no power to review said judgment of the Chancery Court of Richmond by a writ of error; and in holding that said section 4053 of the
112 Code was not, so far as applicable to this proceeding, in violation of section 88 of the Constitution of Virginia giving said Supreme Court of Appeals of Virginia "appellate jurisdiction in all cases * * * involving the life or liberty of any person;" and in holding that under the above quoted language from section 88 of the Constitution of Virginia the plaintiffs in error were not entitled to writ of error from the Supreme Court of Appeals of Virginia to said judgment of said Chancery Court; and in not reversing said judgment of said Chancery Court.

The said errors are more particularly set forth, as follows:

The Supreme Court of Appeals of Virginia erred in holding and deciding:

First. That, as a fact, the said judgment of the said Chancery Court of Richmond does not deprive the plaintiffs in error respectively of their liberties.

Second. That, as a fact, the liberties of the plaintiffs in error respectively were not involved by the said judgment of the said Chancery Court of the City of Richmond, Virginia.

Third. That, after so holding that the liberties of the plaintiffs in error respectively were not involved by said order of said Chancery Court, and that they were not respectively deprived of their liberties thereby, they were not entitled to have said judgment of said Chancery Court reviewed by the said Supreme Court of Appeals, under section 88 of the Constitution of Virginia, which gives to said Supreme Court of Appeals "appellate jurisdiction in all cases * * * involving the life or liberty of any person."

Fourth. That said section 4053 of the Code of Virginia, 1904, which reads, as follows, "To a judgment for a contempt of court, other than for the non-performance of, or disobedience to, a judgment, decree order, a writ of error shall lie to the Supreme Court of Appeals," was not, so far as applicable to the right of the
113 plaintiffs in error to a writ of error from the said Supreme Court of Appeals to said judgment of said Chancery Court, in violation of the said language of said section 88 of the Constitution of Virginia, and was not therefore in violation of the 14th Amendment to the Constitution of the United States in depriving the plaintiffs in error of liberty and property with- due process of law.

Fifth. That said section 4053 of the Code of Virginia, 1904, was not, so far as applicable to the right of the plaintiffs in error to a writ of error from the said Supreme Court of Appeals to said judgment of said Chancery Court, in violation of the said language of said section 88 of the Constitution of Virginia, and was not therefore in violation of the 14th Amendment to the Constitution of the United States in denying to the plaintiffs in error the equal protection of the laws.

And the plaintiffs in error also assign as errors in said order of said Supreme Court of Appeals, the following,

1st. That the State of Virginia, acting through its said Supreme Court of Appeals, by dismissing said writ of error, upon the ground that the liberties of the plaintiffs in error respectively were not in fact involved by said order of said Chancery Court, and thereby refusing the plaintiffs in error a hearing in said Supreme Court of Appeals, although the plaintiffs in error had been guaranteed a right to a hearing in said Supreme Court of Appeals by the language of the 88 section of the Constitution of Virginia in giving to said Supreme Court of Appeals "appellate jurisdiction in all cases * * * involving the life or liberty of any person," violated the 14th Amendment of the Constitution of the United States by depriving the plaintiffs in error respectively of their liberty and property without due process of law.

2nd. That the State of Virginia, acting through its said Supreme Court of Appeals, by dismissing said writ of error, upon the ground that the liberties of the plaintiffs in error respectively were
114 not in fact involved by said order of said Chancery Court, and thereby refusing the plaintiffs in error a hearing in said Supreme Court of Appeals, although the plaintiffs in error had been guaranteed a right to a hearing in said Supreme Court of Appeals by the language of the 88 section of the Constitution of Virginia in giving to said Supreme Court of Appeals, "appellate jurisdiction in all cases * * * involving the life or liberty of any person," violated the 14th Amendment of the Constitution of the United States by denying to the plaintiffs in error respectively the equal protection of the laws.

3rd. In refusing to set aside and reverse the said judgment of the said Chancery Court of Richmond.

For which errors the plaintiffs in error, J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Clover, John H. Trimyer, B. B. Bott, J. E. Boehm, G. D. Baker, W. H. Cummings and E. G. Williams pray that the decree of the Supreme Court of Appeals of Virginia rendered on the 15th day of January, 1908, and on the 30th day of January, 1908, dismissing for want of jurisdiction the writ of error theretofore granted by said Supreme Court of Appeals of Virginia be reversed, and proper relief be granted to the plaintiffs in error, and for costs.

C. V. MEREDITH,
PRESTON COCKE,
B. O. WHITE,
Counsel for Plaintiffs in Error.

15 J. W. FORBES, THOMAS TATUM OSBORNE, JOHN T. COX, J. W. JONES, C. C. SEDGWICK, EUGENE CLOVER, JOHN H. TRIMYER, B. B. BOTT, J. E. BOEHM, G. D. BAKER, W. H. CUMMINGS and E. G. WILLIAMS,

vs.

HE STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA.

Petition.

o the Honorable James Keith, President Supreme Court of Appeals of Virginia:

J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Clover, John H. Trimyer, B. B. Bott, J. E. oehm, G. D. Baker, W. H. Cummings and E. G. Williams, considing themselves aggrieved by the final decision of the Supreme ourt of Appeals of Virginia, rendered on the 15th day of Janary, 1908, and on the 30th day of January, 1908, in this proceedg in dismissing for want of jurisdiction the writ of error thereto- re granted by it, hereby prays the allowance of a writ of error re- rnable into the Supreme Court of the United States, and for cita- n and supersedeas. Assignment of errors is hereto attached.

C. V. MEREDITH,
PRESTON COCKE,
B. D. WHITE,

Counsel for J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Clover, John H. Trimyer, B. B. Bott, J. E. Boehm, G. D. Baker, W. H. Cummings, and E. G. Williams, Petitioners.

ATE OF VIRGINIA,
Supreme Court of Appeals, ss:

Let the writ of error issue upon the execution of a bond by the titioners, or either of them, or some one for them, in the penalty $500.00; said bond when approved to act as a supersedeas.

JAMES KEITH,
President Supreme Court of Appeals of Virginia.

Febr'y 21, 1908.

91

116 (Copy.)

In the Supreme Court of the United States.

J. W. FORBES, THOMAS TATUM OSBORNE, JOHN T. COX, J. W. JONES, C. C. SEDGWICK, EUGENE CLOVER, JOHN H. TRIMYER, B. B. BOTTS, H. E. BOEHM, G. D. BAKER, W. H. CUMMINGS, and E. G. WILLIAMS,

vs.

THE STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA, a Corporation.

Bond.

Know all men by these presents that we J. W. Forbes, as principal, and W. R. Trower, as surety, are held firmly bound unto *of* the Commonwealth of Virginia in the sum of five hundred dollars to be paid to the said State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, a corporation, to which payment, well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals and dated this 5" day of March, 1908.

Whereas, the above named plaintiffs in error seek to prosecute its writ of error to the Supreme Court of the United States to reverse the decree rendered in the above entitled cause by the Supreme Court of Appeals of Virginia:

Now, therefore, the condition of this obligation is such that if the above named plaintiffs in error shall prosecute *its* said writ of error to effect, and answer all costs and damages that may be adjudged if it shall fail to make good its plea, then this obligation to be void, otherwise to remain in full force and effect.

(Signed) J. W. FORBES. [SEAL.]
W. R. TROWER. [SEAL.]

117 Copy.

STATE OF VIRGINIA, *City of Richmond:*

I, C. Lee Moore, a Notary Public in and for the City aforesaid do certify that J. W. Forbes and W. R. Trower personally appeared before me in my City aforesaid on the 5" day of March, 1908, and respectively acknowledged his signature to the above bond, and being sworn stated that each one of them was worth the sum of five hundred dollars after payment of all debts due by each respectively.

Given under my hand this 5th day of March, 1908.

(Signed) C. LEE MOORE,
Notary Public.

My Commission expires Jan'y 1st, 1911.

The Foregoing bond is approved

(Signed) JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

The original of the foregoing supersedeas bond was lodged with the clerk of the Supreme Court of Appeals of Virginia on Mch. 5, 1908, and the following endorsement made thereon: Bond. Filed Mch. 5th, 1908.

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

(Endorsed:) Bond. Filed Mch. 5 '08.

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable, the Supreme Court of Appeals of Virginia, Greeting:

118 Because in the record and proceeding, as also in the rendition of the judgment of a plea which is in said Supreme Court of Appeals of Virginia before you, at the January term, 1908, thereof between J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Clover, John H. Trimyer, B. B. Bott, J. E. Boehm, G. D. Baker, W. H. Cummings and E. G. Williams, plaintiffs in error, and The State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, a corporation, defendant in error, a manifest error has happened to the great damage of the said plaintiffs in error, as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the law and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of February, in the year of our Lord one thousand nine hundred and eight.

[Seal United States Circuit Court, Eastern District of Virginia.]

JOSEPH P. BRADY,
Clerk of the Circuit Court of the United States for the Eastern District of Virginia.

119 Allowed:

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

The original of the foregoing writ of error was lodged with the clerk of the Supreme Court of Appeals of Virginia on the 27th day of February, 1908, and also at the same time and place a copy thereof for the defendant, The State Council of Virginia, Junior Order United American Mechanics of the State of Virginia. The following endorsement was made upon the said original writ and upon the copy: Writ of error. Filed February 27, 1908.

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, a corporation, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of Supreme Court of Appeals of Virginia, wherein J. W. Forbes, Thomas Tatum Osborne, John T. Cox, J. W. Jones, C. C. Sedgwick, Eugene Clover, John H. Trimyer, B. B. Bott, J. E. Boehm, G. D. Baker, W. H. Cummings and E. G. Williams, are plaintiffs in error, and you are defendant in error to show cause, if any there be, why the judgment rendered against the said plaintiffs in error as in the said writ of error mentioned, should
120 not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the President of the Supreme Court of Appeals of Virginia, this 10th day of March, in the year of our Lord one thousand nine hundred and eight.

JAMES KEITH,
President of the Supreme Court of Appeals of Virginia.

Attest:

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia.

Service accepted.

SAMUEL A. ANDERSON,
Counsel for the State Council J. O. U. A. M., the Defendant in Error.

UNITED STATES OF AMERICA,
Supreme Court of Appeals of Virginia, ss:

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereunto subscribe my name and affix the seal of said supreme court of appeals, in the city of Richmond, this 14th day of March, 1908.

[Seal Supreme Court of Appeals of Virginia, Richmond.]

H. STEWART JONES, *C. C.*,
Clerk Supreme Court of Appeals of Virginia, at Richmond.

Endorsed on cover: File No. —. Virginia Supreme Court of Appeals. Term No. —. J. W. Forbes, Thomas Tatum Osborne *et als.*, Plaintiffs in Error, *vs.* The State Council of Virginia, Junior Order United American Mechanics of the State of Virginia. Filed —— —, 190—. File No. —.

Endorsed on cover: File No. 21,074. Virginia sup. court appeals. Term No. 322. J. W. Forbes, Thomas Tatum Osborne, John T. Cox *et al.*, plaintiffs in error, *vs.* The State Council of Virginia Junior Order United American Mechanics of the State of Virginia. Filed March 18th, 1908. File No. 21,074.

Stipulation.

J. W. FORBES, THOMAS TATUM OSBORNE, ET ALS., Plaintiffs in Error,
vs.
THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA.

Whereas the opinion of the Supreme Court of Appeals of Virginia in the above styled cause was unintentionally omitted from the Record, it is hereby agreed by the counsel on each side that the attached certified copy of said opinion be printed by the Clerk of the Supreme Court of the United States and be filed with the record for use in the argument and consideration of the case.

J. W. FORBES ET ALS.,
By C. V. MEREDITH, *Counsel.*
STATE COUNCIL OF VIRGINIA,
JUNIOR ORDER OF UNITED
AMERICAN MECHANICS,
By SAMUEL A. ANDERSON, *Counsel.*

Opinion of Supreme Court of Appeals of Virginia, Omitted from Record by Oversight and Printed Now by Agreement Between Counsel.

Chancery Court of City of Richmond.

FORBES ET ALS.
v.
STATE COUNCIL OF VIRGINIA, JUNIOR ORDER UNITED AMERICAN MECHANICS OF VIRGINIA.

Opinion by James Keith, President.

RICHMOND, VA., *January* 16, 1907.

The chancery court for the city of Richmond, in a cause therein pending styled State Council of Virginia, Junior Order United American Mechanics of Virginia, against the National Council, Junior Order United American Mechanics of the United States of North America, and others, upon the petition of the plaintiffs issued a rule on the 20th day of February, 1907, against J. W. Forbes, and others, summoning them to appear before that court on the 13th day of March, 1907, to show cause why they should not be fined and imprisoned "for a contempt of this court in disobeying, disregarding and evading the decree of this court rendered on the 21st day of July, 1904, as affirmed by the Supreme Court of Appeals of Virginia and the Supreme Court of the United States."

This rule was continued from time to time until the 8th day of May, 1907, and on that day came the defendants named in said petition and rule except W. W. Sawyer, as to whom the said rule had

been theretofore dismissed; and the matter being fully heard upon the petition, the rule, the answer of the several defendants, and upon certain affidavits, and the various orders and decrees of the court, it was adjudged that the parties were in contempt of court in disobeying its decree; and thereupon the chancery court of the city of Richmond "desiring to compel obedience to said decree, doth adjudge, order and decree that the persons above named, (against whom the rule was issued) be, and they hereby are fined the sum of twenty dollars each; and the same shall be paid by them, respectively, to the clerk of this court within 35 days from this date, and, in default of such payment, each of said persons shall stand committed to the custody of the sheriff of this city to remain in jail until said sums be paid by them, respectively."

To that order a writ of error and supersedeas was awarded by this court.

We are met at the threshold of the case by a motion to dismiss the writ of error as having been improvidently awarded, the contention upon the part of the State Council, J. O. U. A. M. of Va. being, that for a contempt which consists of disobedience of a lawful decree of a court by a party to the suit in which the decree was rendered, no writ of error lies from this court.

This court is one of limited jurisdiction, and the burden is upon him who invokes its authority to establish its jurisdiction over the matter in controversy. *Harman* v. *City of Lynchburg*, 33 Gratt. 37. Its jurisdiction is defined by the Constitution of the State and the laws passed in pursuance thereof; and in that Constitution and those laws must be found its warrant for the whole jurisdiction which it exercises. Laborious investigation, therefore, into the sources of the common law would shed but a feeble light upon the subject under discussion. To the law, then, as it is written, we shall turn for a solution of the question before us.

Section 4053 of the Code of 1904 provides, that "To a judgment for a contempt of court, other than for the non-performance of, or disobedience to, a judgment, decree, or order, a writ of error shall lie to the supreme court of appeals."

The rule in this case was issued at the instance of the party who had prevailed in the litigation and obtained a decree in its favor. The petition upon which the rule issued alleged that the defendants were disobeying the decree of the court. The judgment upon the rule finds them guilty of this offense, and enters judgment against them in order to compel obedience to the decree. The proceeding thus comes plainly within the fifth sub-division of section 3768 of the Code, which declares the cases in which courts and judges may punish summarily for contempt—"Disobedience or resistance of an officer of the court, juror, witness, or other person to any lawful process, judgment, decree, or order of the said court."

In support of the jurisdiction of the court, plaintiffs in error rely upon the case of *Wells* v. *Com'th*, 21 Gratt. 500. In that case the circuit court of Bedford county issued a rule against Thorpe H. Nance, who was a party to a chancery suit in that court, and against H. H. Wells, his attorney, charging Nance with disobedience to its

decree, and Wells with aiding, abetting and counseling him to disobey it. A judgment was entered against them by the circuit court of Bedford, by which they were sentenced to pay a fine of $50 each, and to be committed to jail for ten days. From that judgment no writ of error seems to have been taken by Nance, but Wells brought his case to this court, and Judge Anderson, delivering its opinion, said: "The first question which meets us in this case is as to the jurisdiction of this court to review the judgment or sentence of the circuit court complained of. The power to fine and imprison for contempt is incident to every court of record. The courts of necessity have the power of protecting the administration of justice, with a promptitude calculated to meet the exigency of the particular case. * * * And where it is not otherwise provided by statute 'the sole adjudication of contempt, and the punishment thereof, belongs exclusively, and without interference, to each respective court.'" Citing in support of this proposition the language of Mr. Justice Blackstone, approved by Judge Story in *Ex parte Kearney*, 7 Wheat. 38, 44. "A commitment for contempt," continues the learned judge "is a commitment in execution; and the judgment of conviction, unless the power to supervise is given by statute, is not subject to review in any other court; not even upon a writ of *habeas corpus*." Citing Hurd on Habeas Corpus, p. 412.

The statute fixing the jurisdiction of this court in contempt cases was at the time of that decision identical with section 4053, as also was the statute which declared the cases in which contempts might be punished summarily. See Code 1860, p. 801. Judge Anderson then points out that the language of the last-mentioned statute is much more comprehensive than the Act which gave at that time the writ of error, for that Act refers only to such judgments for contempt as are designed to enforce performance or obedience to a decree, and not to punish for an offense. To all other judgments for contempt of court, except for non-performance or disobedience of a judgment, decree or order, a writ of error will lie.

Coming then to a consideration of the facts as they appeared in the case of Wells v. Commonwealth, it seems that the judgment complained of in that case was not one to compel the performance of, or obedience to, a decree, but one for the punishment of an offense, and it was, therefore, held that the writ of error had been properly awarded. It seems to be plain that if Nance, who was a party to the suit and was charged with disobedience to a decree of the court and punished for it, had applied for a writ of error, it would have been denied. It was granted to his counsel, for he was not charged with disobedience to the decree; he was not a party to the suit; it had not commanded him to do or to refrain from doing anything. He, therefore, could not have been guilty of an act of disobedience to the mandate of the court. The charge against him for which he was punished, was that he counseled disobedience to the decree; and so the court maintained its jurisdiction and held, that where counsel acts in good faith and demeans himself honestly, he is not responsible for an error of judgment, and the case was reversed.

The offense denounced by the fifth sub-division of section 3768 is "Disobedience * * * to any lawful process, judgment, decree or order," and the theory upon which section 1053 rests, in providing that a writ of error shall lie to this court to all *all* judgments for contempt other than for the non-performance of or disobedience to a judgment, decree or order, seems to be, that in such case the parties to the cause should either appeal from the judgment, decree or order, if they felt aggrieved by it, or if it was a lawful decree or order that it should be obeyed. It is true that in this view the statute fails to provide, it may be, for the very case of which plaintiffs in error complain. They concede, of course, for the purposes of their present contention at least, the correctness of the decree with the violation of which they are charged; but they earnestly insist that they have been guilty of no act of disobedience to its requirements.

The chancery court was of opinion that the fact of disobedience was established, and entered its judgment imposing a fine upon them. We have not considered the evidence with a view to forming any opinion as to whether or not it is sufficient to support the judgment. If we have no jurisdiction to review it, it would be manifestly improper for us to intimate an opinion upon that subject.

Another contention is made by the plaintiffs in error which rests upon the language of the Constitution of 1902.

Article VI, sec. 88, in reference to the jurisdiction of this court, says in part: "Subject to such reasonable rules, as may be prescribed by law, as to the course of appeal, the limitation as to time, the security required, if any, the granting or refusing of appeals, and the procedure therein, it shall, by virtue of this Constitution, have appellate jurisdiction in all cases involving the constitutionality of a law as being repugnant to the Constitution of this State or of the United States, or involving the life or liberty of any person. * * *"

Conceding, for the purposes of this case, that the Constitution operates *ex proprio vigore* without legislative action to confer jurisdiction on this court in all cases involving the life or liberty of any person, we think the language of the Constitution falls short of maintaining the position of plaintiffs in error. The judgment complained of does not deprive them of life or liberty. It imposes a fine, and they are given a reasonable time within which to pay it; and it is only in the event of their failure or refusal to pay it that they are to be committed to jail. The imprisonment then would be, not the direct result of the judgment of the court, which by its terms imposes a fine upon plaintiffs in error for their disobedience to a lawful decree of the court. The language of the Constitution is not broad enough to cover the case before us. It applies to every judgment involving the life or liberty of any person, but by force of the very terms employed excludes from its operation judgments which do not, by their own terms, involve life or liberty.

We are of opinion that this court has no jurisdiction to review the judgment complained of, and the writ of error is, therefore, dismissed.

A copy.

Teste: H. STEWART JONES, *C. C.*

In the Clerk's Office of the Supreme Court of Appeals, in the Library Building, in the City of Richmond, on Wednesday, Nov. 4, 1909.

I, H. Stewart Jones, Clerk of the Supreme Court of Appeals of the State of Virginia, at Richmond, do hereby certify that the foregoing paper writing is a true and accurate copy of the opinion delivered by the Supreme Court of Appeals of the State of Virginia on the 16th day of January, 1907, in the case of Forbes et als. against the State Council of Virginia, Junior Order United American Mechanics of Virginia.

In witness and attestation whereof, I hereunto set my hand and affix the seal of said court at Richmond, Virginia, on this the 4th day of November, 1909.

[Seal Supreme Court of Appeals, Richmond.]

H. STEWART JONES,
Clerk Supreme Court of Appeals of Virginia, at Richmond.

STATE OF VIRGINIA,
City of Richmond, To-wit:

I, James Keith, one of the Judges, and President, of the Supreme Court of Appeals of Virginia, do hereby certify that the foregoing is the true and genuine signature of H. Stewart Jones, Clerk of said Court, and that the foregoing attestation made by him is in due form.

Witness my hand and seal this the 4th day of November, 1909.

JAMES KEITH, [SEAL.]
President.

[Endorsed:] 104—21,074.

[Endorsed:] File No. 21,074. Supreme Court U. S. October term, 1909. Term No. 104. J. W. Forbes et al., pl'ffs in error, vs. The State Council of Virginia Junior Order United American Mechanics of the State of Virginia. Stipulation of counsel and addition to record. Filed November 8, 1909.

IN THE

Supreme Court of the United States

J. W. FORBES ET ALS.

vs.

THE STATE COUNCIL OF VIRGINIA JUNIOR ORDER UNITED AMERICAN MECHANICS OF THE STATE OF VIRGINIA.

Brief for Appellants

The proceedings presented by the record in this case arose out of the cause previously before this court under the style of the "National Council, Junior Order United American Mechanics v. State Council, Junior Order United American Mechanics of the State of Virginia," 203 U. S., p. 163. The record presents a judgment entered by the Judge of the Chancery Court of the city of Richmond in a proceeding for an alleged contempt against the appellants herein, for violating the final order rendered in the cause above named.

A brief statement of the facts is necessary for a clear appreciation of the legal questions herein involved.

Statement of the Case.

As for several years previous thereto, so in 1900, there existed, in the several States of the Union, including Virginia, a fraternal and benevolent association, known as the "National Council Junior Order United American Mechanics of the United States of North America." It was a corporation chartered under the laws of the State of Pennsylvania. Besides the head body, it consisted of subordinate and voluntary associations, known as State Councils of the several States and local Councils. The State Councils were immediately connected with and formed in part the said National Council. It derived its powers from said National Council, under what was called a State Council charter. The local councils in a State were subordinate to the State Council of that State, and each had a charter from the State Council. In 1899 and 1900 there was a dissension between the said National Council and a majority of the members of the State Council of Virginia. In that dissension a majority of the local councils in Virginia sided with the dissenting members of the State Council of Virginia. On February first, 1900, the dissenting members of the State Council of Virginia obtained from the Legislature of that State a statutory charter creating them a corporation under the style of the "State Council of Virginia, Junior Order United American Mechanics of the State of Virginia." That title was the same as that previously granted under a fraternal charter to said State Council by the said National Council.

By the statutory charter the new organization was declared the supreme head of the order of Junior Order United American Mechanics in Virginia—with exclusive right "to grant charters to subordinate councils, Junior Order United American Mechanics in the State of Virginia."

The National Council, deeming such a course as violative of its rights as the head of the Order, revoked the old fraternal charter it had formerly granted, creating the State

Council of Virginia. Subsequently it granted such a charter to the representatives of those local councils that had remained faithful to the National Council, and had refused to join the said new organization. It granted that charter under the same name as that formerly had by the old State Council and that then held by the new statutory organization.

The voluntary State Council, so created by the National Council, after duly organizing, began to create subordinate councils.

Thereupon the statutory organization, which is here the appellee, filed a bill in the Chancery Court of the city of Richmond, Virginia, praying an injunction against the said National Council and those individuals, who had been created by the National Council into the new voluntary State Council, asking that they be enjoined from using the said name or "any other name of like import likely to be taken for that of your orator," and also from doing certain other things.

After considerable litigation, the said court entered a final decree. See page 26 to 38. By that decree the respondents in said suit were

> "enjoined and restrained from continuing the use within the State of Virginia of the name of State Council of Virginia, Junior Order United American Mechanics of the State of Virginia, or any other name of like import likely to be taken for that of the plaintiff, * * *, and from carrying out, within the State of Virginia, under the name of the plaintiff, or any name of like import, any of the objects of which the said National Council of the Junior Order of the United American Mechanics of the United States of North America, or said voluntary association organized on or about March second, 1901, as aforesaid were organized, * * *, and that all and any of the said defendants, under the name of plaintiff, or any other name of like import, be enjoined from granting charters to subordinate Councils within the State of Virginia," etc., etc.

From that decree an appeal was taken to the Supreme Court of Appeals of Virginia.

Upon that appeal that court declared in its opinion as follows:

> "The charter is prospective in its operation. It does not undertake, as we construe it, to deal with vested rights. It interferes with no right of property. It leaves the whole order of things as it existed with respect to the society, known as the Junior Order United American Mechanics, unaffected, and all rights of persons and property which had been acquired under that organization undisturbed and unaffected, except that it declares that the corporation created by the act shall have full and exclusive authority and jurisdiction to grant charters to subordinate Councils in the State of Virginia." See 104 Va., p. 204.

And in its order the Court decreed as follows:

> "That decree appealed from should be, and is, hereby amended so as to provide that nothing therein contained, shall, in any wise, interfere with any personal or property rights which may have accrued prior to the 17th day of February, 1900." See 104 Va. on page 208.

From the decision of the Supreme Court of Appeals of Virginia, an appeal was taken to this court. By the decision of this Court the decision of the Supreme Court of Virginia was affirmed so far as any question arising under the Constitution of the United States was involved.

Thereupon the voluntary association, known as the State Council of Virginia, Junior Order United American Mechanics of Virginia, which had been enjoined from using that name, "or any other name of like import likely to be taken for that" of the complainant, met, and by resolution disbanded, and returned to the National Council the association charter creating it as the State Council. See answer of the appellant.

Those persons then present, representing the subordinate Councils, which were loyal to the National Council, had a meeting and resolved to seek for a charter from the proper State authorities of Virginia under a name which would not be objectionable to or in violation of the terms of said decree. They considered asking for the name of the "Virginia Branch of the National Council of the Junior Order United American Mechanics." They deemed that as clearly distinguishable from that of the "State Council of Virginia, Junior Order United American Mechanics of Virginia." But they appointed a committee to consult counsel as to obtaining a charter, with power to select such name as would not be violative of said decree.

The committee consulted counsel, as directed. At that consultation it was determined to ask for a charter under the name which was thought to be still more distinctive. The name selected was the "Virginia Branch of the Junior Order United Americans."

Three of the appellants, J. W. Forbes, Thomas Tatum Osborne and John T. Cox, presented to the State Corporation Commission, the body empowered to grant such a petition, a petition for a charter under the name of the "Virginia Branch of the Junior Order United Americans." The requirements of section 1105d, of the Code of Virginia were duly followed. The Judge of the Corporation Court of Norfolk City, having duly certified said petition, it was presented to the clerk of the Corporation Commission.

Upon such presentation by the counsel of the appellants, he was informed by the said clerk that Mr. Davis Bottom, a prominent member of the said State Council of the Junior Order United American Mechanics, had asked that, if any petition for a charter be presented by the appellants he be notified, so that he could see the same before it should be granted. He was so informed.

A few days afterwards the counsel of the appellants requested the president of said Commission to pass upon said petition. Thereupon he was informed that the Commission

desired that the counsel of the State Counsel be notified, and requested to agree upon some day when the Commission could hear objection to the granting of said charter. The appellants' counsel so notified the counsel of said State Council, who stated that he would determine in a few days whether he would so appear or not. A few days afterwards the said counsel informed the appellants' counsel, that he had determined not to appear before the Corporation Commission, but would pursue his remedy in the courts. The Corporation Commission was so informed, and at its request it was furnished with a copy of the record in said suit in the Supreme Court of the United States, and a copy of the opinion of said court.

A few days afterwards, upon December 29th, 1906, the charter was granted upon said petition. A copy of said charter is a part of the record accompanying this petition.

On February 18th, 1907, the said statutory State Council presented the said Chancery Court a petition, in which they prayed that the appellants "be summoned and punished for their contempt in disregarding and disobeying the aforesaid decree of this court," etc.

Said appellants set forth in its petition the substance of the former suit, and said final decree in full. It then alleged that the old voluntary association, known as the "State Council," etc., had passed a resolution that it take steps to have itself incorporated under the name of the Virginia Branch of the National Council of the Junior Order United American Mechanics. That acting under said resolution the charter granted by the Corporation Commission had been applied for and obtained.

That after said charter had been obtained the organization accepted the charter and declared its alliance and affiliation with the said National Council, Junior Order United American Mechanics, and was acting under its control.

That said organization had granted charters to subordinate Councils—encouraged them to act in a policy of adherence to the said National Council.

It made other allegations which need not here be recited.

Upon said petition a rule was issued February 20th, 1907, against the appellants, summoning them to show cause why they should not be "fined and imprisoned for a contempt of this Court in disobeying, disregarding and evading the decree of this Court rendered on the 21st day of July, 1904, as affirmed by the Supreme Court of Appeals of Virginia," etc.

The appellants filed their answers to said petition and rule. They admitted the statement of the previous litigation, but quoted from said decree of July 21st, and asked attention to its language. They denied that any act in obtaining the charter from the Corporation Commission had been done "as officers of the voluntary association" known as the Alexandria Association, but as individuals, after the said Alexandria Association had been disbanded.

They then set forth in full the only resolution adopted at said meeting of the Alexandria Association. Said resolution sets forth the previous litigations, its course through the several courts, the effects of the decrees of the courts, and then declared that for those reasons the charter from the National Council to the Alexandria voluntary association be returned to the National Council. That after the adoption of said resolution the said Association adjourned.

It then sets forth that after said adjournment those present discussed the advisability of asking for a charter from the Corporation Commission, and appointed a committee from their number to take proper steps looking to that purpose.

It set forth the meeting had afterwards with counsel as to what course to pursue—that they determined to ask for a charter under the name of the "Virginia Branch of the Junior Order United Americans" as one not of "like import"—that is, one not likely to deceive any sensible man.

That a petition for a charter was presented under that name, that its objects were set forth in said charter, that those objects were manifestly different from those set forth in the charter of the Virginia Councils, that while their objects em-

braced the general indefinite objects in the charter of the Virginia Council—objects which any one could advocate, yet at the same time it set forth certain specific and definite objects not contained in the charter of the Virginia State Council, viz., to shield Americans "from the distressing effects of foreign competition," "to maintain the public school system of the State of Virginia and of the United States," "to prevent sectarian influence with said public school system," and "to uphold the reading of the Bible in said schools."

The answer then sets forth, and accompanied the same with an affidavit from its counsel, how the parties asking for the rule had had notice of the application for the charter, how they had been notified to appear before the Corporation Commission to show any objection to the same, but had refused, and how the Commission, after considering the decree of the said Chancery Court of July 21st, 1904, had declared that the charter should be granted.

The appellants insisted that they had taken every step possible, every step known to the law, by which they could avoid violating the said decree.

The appellants further insisted in their answer that under section 154 of the Constitution of Virginia, the creating of the corporations and amendments of charters was lodged solely in the Corporation Commission; that by section 156 of said Constitution the Corporation Commission is declared "the department of government through which shall be issued all charters and amendments," "subject to the requirements, rules and regulations as may be prescribed by law."

They also cited section 1105 (d), clauses 2 and 3, Code 1904, declaring when the Corporation Commission should grant a charter to a fraternal organization. That by that statute it is required that the Corporation Commission ascertain and declare, among other things, that the name asked for is such "as to distinguish it from any other corporation chartered for similar purposes."

They insisted that the Corporation Commission alone had

the right to determine whether the name given was such as to "distinguish it from any other name of an existing corporation." That as the Corporation Commission had declared it did not infringe upon the right of any other corporation, that decision was final and binding unless proper steps be taken to test that decision.

The answer also set forth other lines of defense which are immaterial.

Upon said petition and answer, and some affidavits which need not be particularly noted, a hearing was had. Upon said hearing the Judge of said Chancery Court entered an order holding each of the appellants to be in contempt, and imposed a fine of twenty dollars upon each of them, and further ordered as follows:

> "and the same shall be paid by them, respectively, to the clerk of this court within thirty-five days from this date, and, in default of such payment, each of said persons shall stand committed to the custody of the sheriff of this city to remain in jail until said sums be paid by them, respectively." Record, page 72-74.

During said hearing the appellants filed two bills of exceptions to certain rulings of the Court:

First: To the refusal of the Court to grant the request of the appellants that it would designate what words in the name of the new corporation were objectionable. Page 75.

Second: To the refusal of the Court to state in its order whether by the decree of July 21st, 1904, the appellants were prohibited from associating or incorporating themselves under any name whatever, and advocating the objects set forth in the charter complained of. Page 76.

From the order of the Chancery Court of Richmond imposing said fines upon the appellants and committing them to jail, if said fines were not paid, the appellants applied for a writ of error from the Supreme Court of Appeals of Virginia. That was the proper form of procedure. **Balt & Ohio Rd. Co.**

v. City of Wheeling, 13 Grat. 40. The said writ was duly granted

In the petition for said writ the appellants set forth the reasons why the Chancery Court erred in entering said order. Record, pages 1 to 34.

In said petition they also anticipated the objection which they understood would be made, viz., that it was a contempt case of such a nature that no writ of error would lie.

This contention was suggested by the existence of a statute of Virginia, reading as follows:

> "To a judgment for contempt of court, other than for the non-performance of, or disobedience to, a judgment, decree, or order, a writ of error shall lie to the Supreme Court of Appeals." Code of Virginia, 1904, section 4053.

It was contended that the contempt in this case came within the exception. In their petition the appellants pointed out that those words had already been construed by the Supreme Court of the State of Virginia, as not excluding a case like this from the right to the writ. Record, pages 14, 15, 16 and 18, where the Virginia decisions are cited.

Those cases were:

Balt. & Ohio Rd. Co. Co. v. City of Wheeling, 13 Grat. 40.
Wells v. Commonwealth, 21 Grat. 500.
Postal Tel. Co. v. N. & W. Rd. Co., 88 Va. 929.
Miller case, 80 Va. 33.
Kendrick's case, 78 Va. 490.
Cullen's case, 24 Grat. 624.
Temple's case, 75 Va. 892.

In further reply the appellants insisted that, if the language of the said exception did apply to them, it was void, as in violation of the provision of the 88th section of the Constitution of Virginia giving constitutional jurisdiction to the said Supreme Court of Virginia, as follows:

> "It shall, **by virtue of this Constitution,** have appellate jurisdiction in all cases * * * involving the life or liberty of any person."

In support of this position that the Supreme Court had jurisdiction in the matter by virtue of the Constitution, and that such jurisdiction could not be taken away by any State statute, the appellants cited **Balt. & Ohio Rd. Co. v. City of Wheeling,** 13 Grat. 40—a case of a contempt similar to the one at issue.

In that case the Supreme Court of Virginia said:

> "A contempt of court is in the nature of a criminal offence; and the proceeding for its punishment is in the nature of a criminal proceeding."

They cited **Hunley v. Com.,** 188 Mass. 433; **State v. Leftwich,** 41 Minn. 42; **Baldwin v. State,** 126 Ind. 24-31, and **State v. Bland,** 88 So. West. 28. They also cited **Bessette v. Conkey Co.,** 194 U. S. 324, where this court held that jurisdiction had been given it in contempt cases, by virtue of certain words in a statute of the United States, giving jurisdiction "in all cases arising under the criminal laws."

In its decision the Supreme Court of Virginia declined to pass upon the question whether the facts were sufficient to support the judgment for contempt. **Forbes v. State Council, etc.,** 107 Va. 853-858.

It decided that the case came within the exception in the said statute as to appeals in cases of contempt, and that for that reason it was without jurisdiction, and dismissed the writ of error, which it had theretofore granted.

But in its opinion it passed upon the contention of the appellants, that it had jurisdiction, notwithstanding said statute, by reason of the said language in the 88th section of the Constitution of Virginia, giving it jurisdiction "in all cases involving * * * the life or liberty of any person."

It declared:

> "Conceding for the purpose of this case, the Constitution operates **ex propio vigore**, without legislative action, to confer jurisdiction on this Court in all cases involving the life or liberty of any person, we think the language of the Constitution falls short of maintaining the position of plaintiffs in error. **The judgment complained of does not deprive them of life or liberty.** It imposes a fine, and they are given a reasonable time within which to pay it; and it is only in the event of their failure or refusal to pay it that they are to be committed to jail. The imprisonment, then, would be, not the direct result of the judgment of the Court, which by its terms imposes a fine upon plaintiffs in error for their disobedience to a lawful decree of the court. The language of the Constitution is not broad enough to cover the case before us. **It applies to every judgment involving the life or liberty of any person**, but by force of the very terms employed, excludes from its operation judgments which do not by their own terms involve life or liberty." 107 Va., p. 859.

From that extract of the decision it will be seen that the State Supreme Court decided two matters:

First: That the language of the State Constitution "applies to every judgment involving the life or liberty of any person."

Second: That by the decree of the Chancery Court the "liberty" of the appellants was not **involved.**

The first announcement was as to a matter of law, a matter of the construction of the language of the State Constitution, and hence will be accepted by this Court.

The second, however, is only as to a **question of fact**—whether the liberty of the appellants were involved. As to that, this Court has always retained its right to finally determine whether a State proceeding involves the liberty of a citizen, or deprives him thereof.

Upon the rendition of this decision the appellants filed a petition for a rehearing. See page 79 to 86. In that petition the appellants urged that the Court had erred in saying that

their liberties were not involved, and that, if they did not pay the fines and thereupon were imprisoned, it was their voluntary act. They called attention to the fact that they might not be able to pay, and hence be forced to go to jail, and that had they paid the fines, it would have been simply to buy their liberties. They insisted that such a construction of the word "liberty" was violative of numerous decisions of this Court. They urged that such a construction was in opposition to all the decisions upon analogous questions.

Finally they set forth, on page 86, the following positions:

> "**Fourth**: That if the exception in said last quoted section (Section 4053), applies to the proceeding in this case, it is in violation of section 88 of the Constitution of Virginia, which declares that the Court 'shall, by virtue of this Constitution, have appellate jurisdiction in all cases involving the life or liberty of any person.'
>
> "**Fifth**: That if the exception in said last quoted section applies to the proceeding in this case, it is in violation of the Fourteenth amendment of the Constitution of the United States, which reads:
>
> "'Nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws:'
>
> in that it attempts to deprive the appellants of the right to a writ of error from this Court, as given and guaranteed by the said section 88 of the Constitution of Virginia above quoted, and thereby deprives the appellants of their liberties without due process of law, as fixed in Virginia, and denies to them the equal protection of the laws of that State.
>
> "**Sixth**: That a denial by this Honorable Court of the right of the appellants to a writ of error under section 88 of the Constitution of Virginia will be in violation of said language of the Fourteenth Amendment of the Constitution of the United States, in that it will deprive them

of their properties and liberties without due process of law, and would deny to them the equal protection of the laws."

The Supreme Court entered an order denying the petition for a rehearing. Page 87.

Assignments of Errors.

To the rulings above mentioned the appellants in this petition for a writ of error to this Court set forth the following:

"The Supreme Court of Appeals of Virginia erred in holding and deciding:

"**First**: That, as a fact, the said judgment of the said Chancery Court of Richmond does not deprive the plaintiffs in error, respectively, of their liberties.

"**Second**: That, as a fact, the liberties of the plaintiffs in error, respectively, were not involved by the said judgment of the said Chancery Court of the city of Richmond, Virginia.

"**Third**: That, after so holding that the liberties of the plaintiffs in error, respectively, were not involved by said order of said Chancery Court, and that they were not, respectively, deprived of their liberties thereby, they were not entitled to have said judgment of said Chancery Court reviewed by the said Supreme Court of Appeals, under section 88 of the Constitution of Virginia, which gives to said Supreme Court of Appeals 'appellate jurisdiction in all cases * * * involving the life or liberty of any person.'

"**Fourth**: That said section 4053 of the Code of Virginia, 1904, which reads as follows:

" 'To a judgment for a contempt of court, other than for the non-performance of, or disobedience to, a judgment, decree or order, a writ of error shall lie to the Supreme Court of Appeals.'

was not, so far as applicable to the right of the plaintiffs in error to a writ of error from the said Supreme Court of Appeals to said judgment of said Chancery Court, in violation of the said language of said section 88 of the Constitution of Virginia, and was not, therefore, in violation of the Fourteenth Amendment to the Constitution of the United States in depriving the plaintiffs in error of liberty and property without due process of law.

"**Fifth**: That said section 4053 of the Code of Virginia, 1904, was not, so far as applicable to the right of the plaintiffs in error to a writ of error from the said Supreme Court of Appeals to said judgment of said Chancery Court in violation of the said language of said section 88 of the Constitution of Virginia, and was not, therefore, in violation of the Fourteenth Amendment to the Constitution of the United States in denying to the plaintiffs in error the equal protection of the laws."

And the plaintiffs in error also assign as errors in said order of said Supreme Court of Appeals, the following:

First: That the State of Virginia, acting through its Supreme Court of Appeals, by dismissing said writ of error, upon the ground that the liberties of the plaintiffs in error, respectively, were not in fact involved by said order of said Chancery Court, and thereby refusing the plaintiffs in error a hearing in said Supreme Court of Appeals, although the plaintiffs in error had been guaranteed a right to a hearing in said Supreme Court of Appeals by the language of the 88th section of the Constitution of Virginia in giving to said Supreme Court of Appeals "appellate jurisdiction in all case * * * involving the life or liberty of any person," violated the Fourteenth Amendment of the Constitution of the United States by depriving the plaintiffs in error of their liberty and property without due process of law.

Second: That the State of Virginia, acting through its Supreme Court of Appeals, by dismissing said writ of error, upon the ground that the liberties of the plaintiffs

in error, respectively, were not in fact involved by said order of said Chancery Court, and thereby refusing the plaintiffs in error a hearing in said Supreme Court of Appeals, although the plaintiffs in error had been guaranteed a right to a hearing in said Supreme Court of Appeals by the language of the 88th section of the Constitution of Virginia in giving to said Supreme Court of Appeals "appellate jurisdiction in all cases * * * involving the life or liberty of any person," violated the Fourteenth Amendment of the Constitution of the United States by denying to the plaintiffs in error, respectively, the equal protection of the laws.

Third.: In refusing to set aside and reverse the said judgment of the Chancery Court of Richmond."

It will be seen, as above mentioned, that the Supreme Court of Appeals of Virginia declared in its opinion that section 88 of the Constitution of Virginia, in giving it jurisdiction, "applies to **every judgment** involving the life or liberty of any person."

Hence the questions at issue are:

First: Whether the Supreme Court of Virginia did not err in declaring as **a matter of fact** that the liberties of the appellants were not "involved," by an order imposing a fine upon each of them, and, further providing that, if it was not paid in a certain time, "each of said persons shall stand committed to the custody of the sheriff of this city to remain in jail until said sums be paid by them respectively."

Second: Whether the State statute, construed by the Supreme Court of Virginia, as depriving the appellants of the right to a writ of error, notwithstanding the language of the State Constitution, giving every one a right to that writ, whose liberty was involved, does not deny to the appellants "due process of law," as then known in Virginia, and the equal protection of the laws of that State as embodied in its Constitution.

Third: Whether in so holding that their liberties were not involved, and in refusing to give the appellants the hearing

before it, which was guaranteed them by the State Constitution, that Court, representing the State of Virginia, did not deny to the appellants "due process of law," as then existing in that State, and the equal protection of the highest law of that State.

The first question can be decided by determining, what is the character of the proceeding in which the said order was entered.

It is definitely settled in Virginia that a proceeding for a contempt is a criminal proceeding. As was shown in the petition to the State Supreme Court for a writ of error, the statutes of this State from its early days prove such to be its nature. See pages 14 and 15. It was **expressly** so held in **Balt. & Ohio Rd. Co. v. City of Wheeling**, 13 Grat. 40, which involved a contempt like the one alleged in this case for the disobedience of an injunction order.

Remembering that it is a criminal proceeding, it is evident that the court followed substantially the course authorized in ordinary criminal prosecutions for misdemeanors by section 786, Code of 1904, which reads:

> "The court in which any judgment for a fine is rendered, going, in whole or in part to the Commonwealth, or for a fine going, in whole or in part, to any city or incorporated town upon appeal taken from the decision of the mayor, etc., etc., may of its own, or at the instance of the attorney for the Commonwealth, commit the defendant to jail until the fine and costs are paid." It also provides for the issuance of a **capias pro** fine.

For what reason are appeals allowed from such judgments except that they involved one's liberty? It was never doubted but that by such judgments one's liberty was involved; nor had it ever been suggested that, if one went under any such judgment to jail, he went voluntarily or through his own fault. It has always been recognized that all such judgments involve one's liberty. It has only been upon that ground that appeals

have been allowed from convictions for misdemeanors or violations of city's ordinances.

Case after case has arisen in the several States in which it has been claimed that the courts had no power to imprison for failure to pay a fine, as it would amount to imprisonment for debt. Yet the courts have almost unanimously denied the claim, upon the ground that a fine is a punishment and that the imprisonment is for its enforcement. 19 Ill. 613; **Kennedy v. People,** 122 Ill. p. 653. If such rulings be correct, that the imprisonment is a part of the punishment, not assumed by the party, but imposed by the court, then the judgment of the court in this case clearly involves the appellants' liberties.

This view agrees with the usual meaning of the word "involve."

Webster says that the word means "to connect by way of natural consequence or effect." The Standard Dictionary says, "have as a result or logical consequence."

The Century Dictionary says, "to bring into a common relation or connection."

In **Ex Parte O'Brien,** 127 Mo., 477, it is said:

> "As remarked by an author of acknowledged merit, contempt of court is a specific criminal offence, and the fine imposed is a judgment in a criminal case. The adjudication is a conviction, and the commitment in consequence thereon is execution."

The Constitution of the United States does not use as broad a word as the word "involve." It declares, "nor shall any State **deprive** any person of life, liberty or property without due process of law." The same words are used in the fifth amendment to the same Constitution, when treating of criminal prosecutions. The Supreme Court has held that the words mean the same in both amendments. **Hustado v. California.** 110 U. S., on pages 534-5.

It would be useless to cite to this court its many decisions, declaring the broad meaning to be given to those words. It has held that neither the word "deprive" nor the word "liberty" is to be given such a restricted meaning as to apply only to physical restraint.

The Supreme Court of Virginia has passed upon that question. In **Young's case,** 101 Va., on pages 862-3, that court says:

> "The word liberty as used in the Constitution of the United States and the several States has frequently been construed, and means more than mere freedom from restraint. It means not only the right to go where one chooses, but to do such acts as he may judge best for his interest, not inconsistent with the equal rights of others," etc.

In **Jemingan case,** 104 Va., 850-853, one of the arguments of the court, to show that it was a criminal case, was that the magistrate was required by the act to send the offender to jail, **if he did not pay the fine.**

The appellants insist that by analogy, the construction put by the State Supreme Court upon the words "involving * * * liberty" contradicts several well-known principles of law.

In **Green v. Biggs,** 1 Curtis 311, Judge Benjamin R. Curtis says on page 325:

> "To require security for the payment of the penalty and costs, as a condition for having a trial, so far as I am informed, is a novelty in criminal jurisprudence; and in my opinion, it is not only essentially unjust, but in conflict with that clause of the Constitution which secures the accused from being deprived of his life, liberty or property, unless by the judgment of his peers, or the law of the land."

He further said:

> "For it would treat the innocent, who are unable to furnish the required security, as if they were guilty, and would punish them, while still presumed innocent, for their poverty, or want of friends."

He further said, on page 326:

> "A condition, which would impair his right to any trial, if prescribed as the condition of his having any, impairs his right to this trial, if prescribed as a condition for his having it."

Is it not, then, equally true that any condition or requirement, which would impair one's right to liberty, if prescribed as the condition for the enjoyment of liberty, would impair or involve his right to liberty, if prescribed as a condition for his having liberty?

On page 327 he says:

> "If this were not so, there would be no limit to legislative control over this right; for if one onerous condition may be imposed, so may any number, until the right becomes so difficult of attainment that it ceases to be a common right and can be enjoyed only by a few."

The construction put by the State Supreme Court is also contradictory of the principle of "former jeopardy." One need have been convicted to make such a plea. It will lie whenever his liberty has been imperilled upon a valid indictment. **Ex parte Ulrich**, 42 Fed. 587; **Ex parte Lange,** 18 Wall., 168-9; 92 S. W., 151.

The rulings as to former jeopardy arose out of the principle that no man shall be punished twice for the same offence. The law recognized that it was not right to require an actual conviction, but that it was sufficient if his liberty was put in danger. **Ex parte Lange,** 18 Wall., on page 169.

The writ of **habeas corpus** is only issued where one is involuntarily and actually imprisoned, "the great object of

which is the liberation of those who may be imprisoned without sufficient cause." 21 Cyc., p. 282. Yet it has been unhesitatingly issued in proper cases where one is in prison for the refusal to pay a fine imposed for contempt, and for misdemeanors.

In **Ex parte Curtis**, 106 U. S., 371, the party was convicted of a misdemeanor. "Upon his conviction he was sentenced to pay a fine and stand committed until payment was made." A writ of **habeas corpus** was issued. The Supreme Court of the United States did not say that his liberty was not involved—that the court had only imposed a fine—and that if he was in prison he was there voluntarily or through his own act. It considered his conviction, and only after holding the statute valid, did it remand him.

In **Ex parte Rowland**, 104 U. S., 604, the judgment in a contempt case was to pay a fine and costs, and to stand committed until they were paid. They were not paid, and he went to jail. He was released on **habeas corpus**. The writ would not have been issued if he had been considered as having gone to jail voluntarily or through his own choice.

In **Ex parte Fisk**, 113 U. S., p. 713, Fisk, for refusing to answer certain questions, was "fined $500.00 and committed to the custody of the marshal until it was paid," page 715. He was released on **habeas corpus**.

It is manifest that the court regarded the imprisonment as the result of the court's order, and that through it, and not from his refusal to pay, was his liberty involved.

In re Ayers, 123 U. S., 443. Ayers, for an alleged contempt of court in disobeying its order, was "fined the sum of $500.00, and stands committed in the custody of the marshal of this court until the same be paid and he purge himself of his contempt by dismissing said suit last herein mentioned." He refused to pay the fine, and was released upon a writ of **habeas corpus** issued by the Supreme Court of the United States.

See also **Ex parte Buskirk**, 72 Fed., 14-21; **In re Sawyer**, 124 U. S., 200-209; **In re Tyler**, 149 U. S., 164-169.

Many cases to the same effect could doubtless be cited from

the State Supreme Courts; but it would be useless. Surely the cases cited are sufficient to show, that not only a writ of error, but that even a writ of **habeas corpus**, ought not to be dismissed upon the ground that one's liberty is not **involved** —because one **could** pay the fine and end the matter, if he choose so to do. How could his refusal be a voluntary act, when his choice could not have been voluntary, as it would have been made under duress?

Your appellants further respectfully submit that the error of the court's construction of this constitutional protection becomes manifest when the result of such construction is seen.

Suppose that the lower court had in this very case imposed, instead of a fine, a term of imprisonment (which was within its power), could it be contended that our liberties would not have been involved, and that a writ of error could not have been issued by this court upon such an order? Surely not. Yet it would have been for exactly the same act, and from a judgment from the same court upon the same act. The only difference would be, that in one case there would be an actual imprisonment, while in the other a potential imprisonment, unless one surrendered his money in payment of a fine in order to buy and preserve his liberty. Hence, liberty would be involved under either order.

Is there a difference in law, as to whether one's liberty is involved, between an order under which one **must** go immediately to jail, and one under which one **will have** to go to jail, unless one buys his liberty (it may be to a perfectly unjust judgment), and submit to the stigma of a judgment in a criminal proceeding? When one is forced to buy his liberty, is not his liberty involved? Is one's liberty involved only when it has been actually taken away, not when it is threatened to be taken away, and can only be saved by the payment of money under an order of court?—it may be an unjust order.

Would not such a distinction under such circumstances be only a distinction in words, and not in actuality? The necessary result of such a distinction would be to give an unfortunate advantage to one class of citizens over others. Those

who can pay their fines could save their liberty, which, it is said, would not be involved, while those who did not have the means to pay would necessarily and not voluntarily have to be imprisoned, although their liberty was not involved. See language of Judge Curtis, above quoted.

In **Boyd v. U. S.**, 116 U. S., on page 635, it is said:

> "Though the proceeding in question is divested of many of the aggravating incidents of actual search and seizure, yet, as before said, it contains their substance and essence, and effects their substantial purpose * * *. This can only be obviated by adhering to the rule that constitutional provisions for the security of persons and property should be liberally construed."

The construction given would also clearly violate the well-known principle of "Duress."

In **Brown v. Pierce**, 7 Wall., on p. 214, it is said:

> "Duress, in its more extended sense, means that degree of constraint or danger, either actually inflicted or threatened and impending, which is sufficient, in severity or in apprehension, to overcome the mind and will of a person of ordinary firmness." See also **First Nat. Bank. v. Sergeant**, 59 L. R. Ann., 296-299.

Maxwell v. Griswold, 10 How., 242-256; **Water Co. v. Newburyfort**, 103 Fed., 586-596; **Swift Co. v. U. S.**, 111 U. S., 22-28:

> "In our judgment the payment of money to an official, as in the present, to avoid an onerous penalty, though the imposition of that penalty might have been illegal, was sufficient to make the payment an involuntary one." **Robertson v. Frank Bros. Co.**, 133 U. S., 17-24.

In **Johnson v. Thompkins**, 1 Baldw. (U. S. Rpts.), on pages 601-2, it is said:

> "His submission to the threatened and reasonably to be apprehended force is no consent to the arrest, detention or restraint of the freedom of his motion—he is as much imprisoned as if his person was touched, or force actually used," etc.

The construction put upon the order by the State Supreme Court, the appellants submit, is opposed to every decision in any degree similar—to every analogous principle of law, and is not only not supported by any decision of any court, but is contrary to every judicial expression on the subject.

It has been held that a man under a fine is a transgressor, Kisgaugh's Petition, 135 Pa., on page 472.

It has also been said:

> "In criminal prosecutions, fines are assessed against the parties convicted as a punishment for the criminal acts." **McCool v. State**, 23 Ind., 127-131.

Hence the appellants were called upon to suffer, by paying the fine, a criminal punishment, in order to avoid another punishment involving physical restraint.

Surely to hold such an order, as not "involving" the "liberty" of the appellants, is to put an extremely restrictive meaning upon the word liberty, and one violative of every definition, which has ever been given of that word by this court.

The appellants insist that the State Supreme Court clearly erred in holding that their liberties were not involved, and for that reason refusing them a hearing, which, under the State Constitution, was given to them equally with others, and that by such refusal they were deprived of due process of law, as fixed by that Constitution, the highest and controlling law of that State.

It will not be contended that this court is bound by the decision of the State Supreme Court upon the question whether the appellants' liberties were involved. For that decision was upon a **question of fact**, as to what is "liberty." **Newport Light Co. v. Newport**, 151 U. S., 527-536.

This court said in **Hodgson v. Vermont**, 168 U. S., 262-272:

> "We concede the proposition, so earnestly urged on behalf of the plaintiff in error, that by the Fourteenth Amendment it is made the right and the consequent duty of this court, when a case has been duly brought before it, to inquire whether, in the enactment and administration of the criminal laws of the State, it is sought to arbitrarily deprive any person of his life, liberty or property, or to refuse him the equal protection of the laws, and that such inquiry is not precluded or ended by the mere fact that the judgment complained of was reached by proceedings in a State Court in pursuance of the provisions of a State statute."

See also **Central, etc. Rd. v. Wright**, 207 U. S., on page 138.

In **Scott v. McNeal**, 154 U. S., page 45, it is said —

> "Upon a writ of error to review the judgment of the highest court of a State, upon the ground that the judgment was against a right claimed under the Constitution of the United States, this court is no more bound by that court's construction of a statute of the Territory or State, when the question is, whether the statute provides for the notice required to constitute due process of law, than when the question is, whether the statute created a contract which has been impaired by a subsequent law of the State, or whether the original liability created by the statute was such that a judgment upon it has not been given due faith and credit in the courts of another State. In every such case, this court must decide for itself the true construction of the statute."

The next question to consider is whether, since the liberties of the appellants were involved, the refusal of the State Supreme Court to give the appellants a hearing, by its dismissal of their writ of error, raises a Federal question.

No former case before this court has presented the question,

whether a State Supreme Court could refuse to grant a hearing, when the same **was guaranteed by the Constitution of that State.** In that respect this case is differentiated from all the cases heretofore before this court.

It can be seen that in the cases, heretofore considered by this court, in which the State Supreme Courts refused writs of error in criminal cases, the parties rested either upon the contention, that the right to a hearing before the State Supreme Court was an absolute right affecting one's liberty, or that some State Supreme Court had erroneously construed some State law, authorizing writs of error. They all rested upon one or the other of those two contentions.

Here is presented the question whether a Supreme Court of a State does not violate "due process of law," when it refuses a hearing upon a writ of error, **admittedly guaranteed by the Constitution of that State,** if the appellants' liberties were involved.

In **Kohl v. Sehlback,** 160 U. S., 293; it is said:

> "In **McKane v. Dunston**, 153 U. S., 684, we held that an appeal to a higher court from a judgment of conviction is not a matter of absolute right, **independently of constitutional or statutory provisions allowing it.**"

The effect of the previous decisions of this court was only to hold that by the **general law** such a right was not an absolute one. But it did not hold that such a right could not become an absolute one by "constitutional or statutory provisions." On the other hand, by its language this court intimates that it can become an absolute right by such provisions. For it declares that such a right is not a matter of absolute right "independently of constitutional or statutory provisions allowing it." Every right given by the due process of law of a State is an absolute right during the existence of the law appealed to.

It must become such a right when unmistakably declared to be an existing right by a State Constitution. Otherwise, the provision in the Fourteenth Amendment must become a mere phrase, without meaning or vitality.

This court recognizes in its decisions that "due process of law" of the National Government as used in the Fifth Amendment to the United States Constitution, meant what was such by the Magna Charter and the Common Law of England at the time of the adoption of that Amendment, unless, and except so far as, modified by the Constitution of the United States. But that Amendment did not restrict National legislation to such previous modes of procedure. Congress held the power to change such modes of procedure from time to time as it might see fit, restricted only by the other privisions contained in that Amendment or declared in other parts of the Constitution of the United States.

Hence, "due process" was not, and is not absolutely fixed, but is elastic to some extent. But it was at first fixed and definite as above mentioned for the time being upon the adoption of that Amendment. And, while it could be altered and modified by National legislation, yet, when such alteration or modification should be made, then the modified mode would become equally as fixed, as "due process of law," and could be no more violated than could the original and unaltered modes have been ignored in the administration of justice.

When we come to the Fourteenth Amendment, intended to be binding upon the States, we find the same or very similar principles affecting State Legislation. When this last named Amendment was adopted, "due process of law" in each State was what were at that time the general laws of that State affecting life, liberty or property, provided they were not violative of the Constitution of the United States. But the States were not limited to the **then** "due process" in that State. Each retained the power to alter that "due process" either by State Constitution or by statute, if not violative of the Constitution of the United States. **Railroad Co. v. Schmidt,** 177 U. S., 230-236.

But when so altered, the modified mode of procedure became, for the time being, in such State "due process" for that State. Whatever may be the changes, which a State may make in its former "due process," still there must at all times exist in a State some kind of "due process," to which persons are entitled for protection. At no time can a State be without some form of "due process," and yet punish a citizen; for, under such circumstances he would be deprived of life or liberty without due process.

Whenever that due process has become fixed either in reference to the Fifth or the Fourteenth Amendment, it has come within purview of the duty of this court to see that the same, as declared either by the highest power of the Nation or by the highest power of the State, shall not be violated to the injury of any citizen.

The highest authority in the first body is the Constitution of the United States. Any expression of that organic law fixes for the nation its "due process" to that extent. Congress can by no statute violate it.

It was said in **Caldwell v. Texas**, 137 U. S., on page 697:

> "By the Fourteenth Amendment the powers of the State in dealing with crime within their borders are not limited, but no State can deprive particular persons or classes of equal and impartial justice under the law. Law, in its regular course of administration through courts of justice, is due process, and when secured by the law of the State, the constitutional restriction is satisfied."

Or as was said in **Hagar Reclamation District**, 111 U. S., page 701:

> "It is sufficient to observe here that by 'due process' is meant one which following the forms of law is appropriate to the case, and just to the parties to be affected. It must be pursued in the ordinary mode prescribed by the law; it must be apportionate to the end to be attained; and

> whenever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought."

The highest authority in a State is its Constitution, subject to the supervening restrictions of the National Constitution. Any expression of that organic law declaring the mode of procedure as to life, liberty or property, not violative of the Constitution of the United States, fixes the "due process" for that State.

"Due process of law," as used in the Fourteenth Amendment, cannot apply to the statutes of the United States, but must apply to the modes of procedure adopted by the States. That mode, if prescribed by a State Constitution, cannot be violated without violating "due process of law." A State Legislature can only commit such violation by means of a statute. Hence any statute which violates the "due process of law," as fixed in a State Constitution, must be violative of the prohibition in the Fourteenth Amendment.

This Court has held that upon an appeal from a State court this Court cannot take cognizance of a violation by a statute of a State Constitution **unless it affects a right guaranteed by the Constitution of the United States.** That rule does not destroy our right to be heard in this case. For one of the rights protected by the National Constitution is that one shall not be deprived of his "liberty" without due process of law. This Court holds that due process of law in a State is the mode of procedure fixed by the highest power in the State. It must then follow that any State statute violating the due process of law of that State, as fixed by the Constitution of that State, as to the "liberty" of a citizen is an effort on the part of the State to prevent such citizen from having "due process," and hence is destructive of that guarantee as given by the Constitution of the United States.

Such, we insist, was the effect of the Virginia statute above mentioned, section 1053, which, according to the Supreme Court of Virginia, prohibited and prevented the appellant

from getting a hearing before that Court. That statute, says that Court, declares that the appellants should not have a writ of error to that Court, although the State Constitution, in fixing the "due process of law" for Virginia, declared that an appeal should lie "in all cases * * * involving the life or liberty of any person," and notwithstanding the fact that that Court held that the language "applies to every judgment involving the life or liberty of any person."

If there is any "due process of law" in Virginia on that subject, that language of the Constitution fixed and declared it. If that language did declare due process of law on that subject, then the State statute declared that the appellant should not have that due process of law, although the Constitution of the United States prohibits any State from passing a law depriving any one of life, liberty or property "without due process of law."

We submit that that statute is void not only as violative of the State Constitution, but as violative of the United States Constitution, since it gave the trial court power to deprive the appellants of their "liberty" without due process of law, as it existed in Virginia. We also submit that for that reason the record presents a Federal question.

The validity of that statute, as being violative of the said language of the State Constitution declaring one's right as to one's liberty, was denied in the petition of the appellants to the State Supreme Court for a writ of error. See Record, page 18 and 19. The validity of the statute being thus denied, the Federal question was sufficiently raised. **Balt., etc. Rd. Co. v. Hopkins**, 130 U. S. 210-224; **Miller v. Cromwell Rd. Co.**, 168 U. S. on page 133.

Subsequently, when the State Supreme Court declared that the language of the State Constitution "applies to every judgment involving the life or liberty of any person," but held that the liberty of the appellants were not involved, the appellants filed a petition, including a printed argument, for a rehearing, to meet the question raised for the first time by

the State Supreme Court. See Record, page 79 to 86. Afterwards, "**on mature consideration** of the petition," the rehearing was refused. Page 87.

In that petition the question was specifically raised that the statute was void as violative of the Fourteenth Amendment, as depriving the appellants of their liberties without due process of law, and refusing to them the equal protection of the laws. See page 86.

Not only does the said statute deprive the appellants of due process of law, but it attempts to deny to the appellants the equal protection of the laws as existing in Virginia.

The supreme State law of Virginia was the Constitution of that State. That law, according to the decision of the State Supreme Court, declared that an appeal or writ of error shall lie "in all cases * * * involving the life or liberty of any person." Any attempt on the part of the State by that statute to segregate the appellants and declare that they should not be entitled to a hearing before the Supreme Court, was a denial of a right which the State Constitution declares should belong "to any person."

While a State may segregate by classification under certain circumstances, it cannot by such classification destroy a right for the protection of one's liberty, which its Constitution declares to belong to **every** citizen, and thereby ordained it "due process of law" in that State for **every** citizen. By so doing it would be depriving some persons of the equal protection of that law, which had been declared by the State Constitution as embracing every one.

If a State makes no declaration in its Constitution as to who shall be entitled to certain remedies, then it remains for the Legislature to classify. And, if by the statutes, a person is given the same protection of the laws that all others in similar circumstances are given, then he has been given the equal protection required. As, for instance, if a State Constitution provided no remedy by appeal applicable to persons fined for contempt, then the State Legislature would perform its duty by declaring that persons fined for certain contempts should

be entitled to a writ of error, and those fined for other contempts should not be so entitled; provided, that the persons so classified were similarly situated. This Court has so declared **under such circumstances**; declaring that the test, whether the equal protection of the laws has been given, is whether the person complaining has been treated as others similarly situated. Hence the point always to be determined is the similarity of situation or of circumstances.

If, however, a State Constitution does fix the **test**, when the constitutional right to a writ of error exists, as to those whose liberty is involved, then a State Legislature, forbidding the right to that writ to a class of persons embraced within that constitutional test, would necessarily be refusing those persons the equal protection of the laws as then existing within that State. For it would be refusing that protection to those similarly situated, **as defined by that State Constitution.**

Instead of allowing a writ of error to all whose liberty was involved, it would be substituting another test of similarity of situation; for instance, whether fined for a certain class of contempts.

There would be no doubt as to the existence of a class similarly situated, as to the offence committed, but the invalidity would, in such a case, be caused by the illegality of the classification. Here the test of the similarity of situation is declared by the Virginia Constitution not to lie in the character of the offence, but in the question whether one's liberty is involved. If any other test is allowed, it would not only be arbitrary, but destructive to some, of a protection provided by the highest law of that State. Such a method of avoidance would result in a practical nullification of that provision of the Fourteenth Amendment.

In passing upon the question whether one has been deprived of the equal protection of the laws, involving one's liberty, this Court is obliged, first, to ascertain and determine what are the laws of the State involving such liberty. This must be true, for it is the laws of the State that are in dispute, and it

is the laws of the State to which the Fourteenth Amendment refers. In deciding that question it could not shut its eyes to its knowledge of the supremacy of a State Constitution over the statutes of a State. Recognizing that fact, this Court would necessarily hold that any mode of procedure, declared by that organic law, as a measure of protection to one's liberty, would be the law of that State on that subject. And hence, that any statute of that State, attempting to deprive of that protection one person or any class of persons, who are by the State Constitution embraced in it, would be a refusal to that person or class of persons of the equal protection of the laws.

Those are exactly the circumstances which are presented by this record. The Constitution of Virginia, its supreme law, declares that the appellants are entitled, along with all others whose liberty is involved by a judgment, to a writ of error as a method of protection of one's liberty. The State statute attempts to segregate from those embraced in the words "any person," a class of persons who, by the judgment of a court, in contempt cases have their liberties involved.

We submit that such a statute attempts to prevent the appellants from having the equal protection of that law which gives the right to a writ of error and a hearing in the State Supreme Court to all persons, who, like the appellants, have their liberties involved by a judgment.

In this case, not only have the appellants been refused by that statute due process of law, as existing in Virginia, and the equal protection of laws in force in that State, but they were also so refused by the State Supreme Court in its judgment upon a question of fact.

It has been admitted above that the due process of law and also the laws of a State may be within certain restrictions changed by a State. The prohibition of the National Constitution does not prohibit such a course by the Legislature of a State. Nor does that provision affect or destroy the power residing in the courts of a State to construe the organic law of a State. But that power embraces no right to limit the meaning of the words life, liberty or property.

A State Court can not declare that a man's life is not involved if it is practically in danger. Nor can it evade the prohibition of the National Constitution by declaring a certain thing is not property. The final decision of those questions of fact rest with this Court.

No more can a State court declare that one's liberty is not involved, when, for all practical purposes and according to all recognized principles of law, one's liberty is put in danger by the order of a court.

Yet it was by such an erroneous exercise of power that the Supreme Court of Virginia refused the appellants a hearing guaranteed them by the Constitution of that State as due process of law.

After declaring that the language of that Constitution, which fixed the due process of law of that State, "applies to every judgment involving the life or liberty of any person," it declared **as a fact** that the liberties of the appellants were not involved.

If the appellants are right in the contention that their liberties were involved, then they are entitled, we submit, to redress from this Court, as it cannot be bound by the decision of the State Supreme Court upon that question. See **Scott v. McNeal, supra.**

As was said in **Chicago, &c., Rd. v. Chicago**, 166 U. S. 226-236:

> "But a State may not by any of its agencies, disregard the prohibitions of the Fourteenth Amendment. Its judicial authorities may keep within the letter of the statute prescribing forms of procedure in the courts, and give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment."
>
> One is entitled to protection in contempt cases as in any other kind of case. **Hovey v. Elliot**, 167 U. S., on p. 219.

Basing its refusal for a hearing upon the erroneous ground

that the appellants' liberties were not involved, the State Supreme Court, in so refusing the hearing, denied to the appellants due process of law as exited in Virginia, and the equal protection of the laws. For, as recognized in **Allen v. Georgia**, 166 U. S. 138-140, the Supreme Court of a State must act

> "in consonance with the constitutional laws of a State and its own procedure."

in order to administer due process of law.

It is respectfully insisted that, as shown above, their liberties were undoubtedly involved, and hence that they were entitled, by due process of law of Virginia, to a hearing before the State Supreme Court. Having been denied that due process and equal protection, they submit that they are entitled to ask of and receive from this Court, protection under the said Fourteenth Amendment.

As the wrong consisted in the act of refusal by the Supreme Court of the State, no Federal question, so far as the action of the Court was concerned, could arise before the doing of that act, and hence no such Federal question, arising from that action could be presented in the record as originally presented to the State Supreme Court. As said above, "its final action" was "inconsistent with that amendment."

As soon as that court, by its refusal to hear the appellants, deprived them of the due process of law and the equal protection of the laws, the appellants presented a petition and note of argument for a rehearing, and insisted therein that such action on the part of the Court violated the said provisions of the Fourteenth Amendment. Record, page 79 to 86. After "mature consideration" of said petition and printed argument a rehearing was refused. Whereupon this appeal was taken to this Court.

We contend for the following principles:

1st. No man can be deprived of life, liberty or property without due process of law, nor can be deprived of the equal protection of the laws.

2d. When not restrained by the Constitution of the United States, a State may, by its enactments, declare what is the due process of law of that State.

3d. That it may make such declaration, protective of one's liberty, in its Constitution, or by its Constitution it may leave to its Legislature to make such declaration.

4th. That when such declaration, **protective of one's liberty,** is made in a State Constitution, it becomes the due process of law of State, and that any violation by the legislative or judicial authorities of that due process, so declared in the State Constitution, becomes also a violation of the Fourteenth Amendment of the Constitution of the United States, in that, it deprives one of his liberty without due process of law, and of the equal protection of the laws.

We also contend that the following facts are disclosed by the record:

1st. That the Supreme Court of Virginia has appellate jurisdiction by virtue of the State Constitution, "in all cases * * * involving the life or liberty of any person."

2. That those words apply "to every judgment involving the life or liberty of any person."

3. That the Supreme Court of the State recognized that the appellants would have been entitled to a writ of error had that Court deemed their liberties involved by the judgment of the Chancery Court.

4. That the Supreme Court of Virginia only refused the appellants a hearing upon the ground that their liberties were not involved.

5. That the liberties of the appellants were involved by said order of the Chancery Court, and that the Supreme Court erred in its ruling upon that question of fact.

It follows from the above principles and facts that the appellants, if not given redress by this court, will be deprived of their liberties without due process of law, as known and existing in the State of Virginia, and of the equal protection of the laws.

We ask that this Court will hold that the appellants' liberties were involved by the order of the Chancery Court, and that the Supreme Court of Virginia, in refusing the appellants a hearing upon their writ of error and in dismissing the same, deprived them of their liberties without due process of law and refused them the equal protection of the laws.

C. V. MEREDITH.
PRESTON COCKE.
E. B. KING.
SMITH W. BENNETT.

No. 104.

IN THE

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Reply Brief for Appellants.

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It will be seen from an examination of the brief of the appellee that, in order to show that no Federal question is involved in this proceeding, it depends upon its contention, that when the State Supreme Court declared, that the appellee's liberties were not involved by the judgment of the Chancery Court, it was **construing** the **language** of the State Constitution, and was not deciding a question of fact, as to what was the **effect** of that judgment of the Chancery Court upon the liberties of the appellants.

On the other hand we insist that, by such decision of that question, it was not construing the language of the State

Constitution, but declared that, under the ordinary acceptation of the term "liberty," as recognized by this court, and as recognized by its own decision in **Young's Case,** 101 Va., 862-3, quoted from in our opening brief, page 19, the liberties of the appellants were not involved by said judgment of the Chancery Court.

We submit that this can be clearly seen from the opinion itself. In the first place it does not intimate that there is any word in the language of the State Constitution which tends to restrict or limit the ordinary meaning of the word "liberty," as used in the State Constitution.

In the next place it in no way intimates in its opinion, that the word "liberty" should be given a narrower meaning than its ordinary acceptation. To the contrary, the court specifically declares of that language that:

> "It applies to every judgment involving the life or liberty of any person," etc., etc.

Instead of suggesting a narrow construction of that language, it gives it the broadest construction. That declaration, we insist, was the only attempt at construction of the language of the Constitution which was made. It, there, in specific terms, declared what the language used in the State Constitution meant. It nowhere attempted afterwards to modify that **construction.**

It is true that it says:

> "The language of the Constitution is not broad enough to cover the case before us."

But that was no modification of the broad construction it had given. What caused it then to so declare against the appellants? Was it because the language was not broad enough to apply "to every case involving the life or liberty of any person"? No! for it immediately follows that statement with

the declaration that the words of the Constitution apply "to **every** case involving the life or liberty of **any** person."

The reason for the declaration against the appellants was because it held as a matter of fact that their liberties were not involved. That this was reason, is clearly seen from its own language, where it says, in an earlier sentence that:

> "The judgment complained of does not deprive them of life or liberty. It imposes a fine, and they are given a reasonable time (35 days, pages 72-4) within which to pay it; and it is only in the event of their failure or refusal to pay it that they are to be committed to jail."

It further stated:

> "It applies to every judgment involving the life or liberty of any person, but, by force of the very terms employed, excludes from its operation judgments which do not by their own terms involve liberty."

It is manifest from these extracts that it was not claiming a narrow construction of the language of the Constitution, but was undertaking to determine as a matter of fact what was the **effect** of the judgment of the Chancery Court. It was passing upon the question of fact whether the judgment of the lower court involved our liberty. Hence it was not a construction of the language of the State Constitution, **but an interpretation of the judgment** of the lower court as to whether our liberties were involved. It was a **declaration** as to the **effect** of that judgment, not a **construction** of the language of the State Constitution. That had already been construed by the words, that:

> "It applies to every judgment involving the life or liberty of any person."

Therefore, that part of the decision as to whether the appellants' liberties were involved is not, we insist, binding on this court, but that it presents a Federal question for the decision of this court.

The authorities which we cited in our opening brief conclusively show that this court does not regard itself bound by the decision of a State court, as to what is, or is not embraced in the word "liberty," or whether there has been a deprivation of liberty.

We submit, therefore, that the principle announced in **Bank, etc v. Lessee of Dudley,** 2 Peters 492; **Callan v. Bransford,** 139 U. S., 197 and **West v. Louisiana,** 194 U. S., 258, cited by appellee upon pages six and seven of its brief, is irrelevant to the question here at issue. We recognized in our opening brief that this court as a rule accepts the **construction** put by State courts upon the statutes and constitutions of their respective States.

We also in that brief accepted the construction by the Virginia Supreme Court upon the language in the State Constitution here relied upon. Accepting that construction, that

> "It applies to every judgment involving the life or liberty of any person."

we submit that it is the appellee, and not the appellants, who are endeavoring to destroy that construction, by relying upon words used by the court, not in construing the State Constitution, but in attempting to declare what was the effect of the decision of the lower court.

It is as to this misconception of the effect of the lower court's judgment—it is as to the erroneous declaration that the appellants' liberties were not involved—that we complain. The result of the wrongful limitation of the scope of the word "liberty" was to deprive us of a hearing, to which we were entitled under the due process of law as then existing in that State.

We believe that we clearly showed in our opening brief, by decisions and by reference to analogous principles, that the State Supreme Court erred in declaring that the appellants' liberties were no involved by the judgment of the Chancery Court. We add now a few more reasons why such a declaration is erroneous.

The judgment by its "own terms" involved the appellants' liberties. For, by the terms of that judgment, the appellants were committed in jail, if the fines were not paid in thirty days. Suppose that after the decision of the State Supreme Court the appellants had submitted to it, instead of seeking relief from this court; suppose that, having so submitted, they were unable to pay those fines and were confined in jail, would not such a result produce a curious commentary and effective contradiction of that court's declaration, that their liberties were not involved by a judgment under which they were incarcerated in a city jail?

There is no proof in this record that such would not have been the result. Yet the State Supreme Court based its declaration, that their liberties were not involved, upon the presumption that they were able to pay, and that a refusal would be purely voluntary. Even if such were the fact, yet a ruling, which construed a constitutional protection, to depend upon one's financial ability to pay a fine cannot meet with this court's approbation.

The scope of one's liberty cannot be narrowed or broadened by such an adventitious circumstance. The broad meaning of that word has been clearly declared by this court. It is only necessary to cite one case to recall that definition:

> "The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pur-

sue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

Allgeyer v. Louisiana, 165 U. S. 578-589.

Surely within the purview of those broad terms is included the right to enjoy his personal freedom, to be free from confinement in a jail or a penitentiary without having to buy his liberty. Yet the State Supreme Court, in its opinion, held, in effect, that the result of the judgment of the Chancery Court was not to involve the appellant's liberties, because they could have saved or purchased their liberties by paying the fines. Surely it has no power to bind this court by such a narrow conception of the word "liberty," as used in the Constitution of the United States.

In the case last cited, the Supreme Court of Louisiana held, in construing the statute of that State that the writing of a letter to agent of an Insurance Company in another State was prohibited by that statute, and was not a deprivation of one's liberty; this court held, that it was a deprivation of liberty within the meaning of the Constitution of the United States.

If the State Supreme Court has final power to declare what constitutes liberty in this State, and what does not amount to a deprivation thereof, why will it not have in any other case? If such final power is lodged in a State Supreme Court what power then remains in this court, and what remains of the protection guaranteed by the Constitution of the United States against the undue exercise of power by the State authorities.

If a State Supreme Court can be the final expositor of the scope of the word "liberty," it could then hold and bind this court by a declaration that one in the custody of a sheriff does not thereby have his liberty involved, but only when in jail. Or it could go further, and say, that confinement in jail is not deprivation of liberty, but only an incarceration in a penitentiary.

It would have an equal power to hold that, where a judgment of a court required a person to do some act or pay some sum of money or suffer capital punishment, by such judgment one's life would not be involved. The statement of such a contention should be its refutation.

There is nothing in the opinion of the State Supreme Court to intimate that the word "liberty," as used in the Constitution of Virginia, is used in any sense different from its ordinary acceptation, or different from the sense in which it is used in the Constitution of the United States. In fact, that court, in a previous decision, has recognized that that word is used in the same sense in the Constitution of the United States and in the State Constitutions.

In **Young's Case**, 101 Va., on pages 862-3, that court says:

> "The word liberty, as used in the Constitution of the United States and the **several States**, has frequently been construed, and means more than mere freedom from restraint. It means not only the right to go where one chooses, but to do such acts as he may judge best for his interest, not inconsistent with the equal rights of others."

We submit that the State Supreme Court has no final power to declare when there has or has not been a deprivation of liberty, but that this court is the ultimate tribunal in which rests such power. The appellee, in its contention that a State Supreme Court has the final power to decide such a question of fact, cites and quotes from **Newport Light Co. v. Newport**, 151 U. S., 151; **Baldwin v. Kansas**, 129 U. S., 52; **Adams v. Church**, 193 U. S., 510; **Mining Co. v. Boggs**, 3 Wall, 304.

It is true that in those cases this court does use the expression that the "conclusions of fact" found by the State Supreme Court are binding upon this court. But an examination of each of those cases will show that this court was not in any one of them speaking of a question of fact—or possibly a mixed question of law and fact—as is at issue in this pro-

ceeding. Here the question is whether the result of a judgment involves one's liberty. In those cases the "conclusions of fact" is the decision of the existence or non-existence of certain circumstanes, acts or transactions. Here there is no circumstances or act in dispute. The judgment of the Chancery Court is admitted by both sides, and the question at issue is whether the result of that judgment involves one's liberty. As to such a question this court has frequently and invariably declared that it is the final arbiter. Such being true, it is manifest that a Federal question is involved.

But it is also claimed by the appellee that even if the question at issue is a Federal question, it was not raised properly at the proper time.

In this case no wrong was done, nor was there any refusal to afford "due process of law," until the decision of the State Supreme Court. It was by that decision for the first time that due process was refused. And that refusal was based upon the ground, the question of fact, that our liberties were not involved.

It was the assuming of that position—that declaration as to that question of fact, which caused the State through its judiciary, and not through the statute, to refuse the "due process," which we claimed—and which the court, from its construction of the State Constitution would have recognized and given us, but for its erroneous view that the appellants' liberties were not involved.

It is evident from the Court's opinion that had the Chancery Court imposed at once a sentence of imprisonment upon the appellants, the Supreme Court would have claimed, under the State Constitution, the power to issue a writ of error, notwithstanding the statute. Again, we insist, that it is, therefore, not the statute, but the erroneous decision of that court which will deprive the appellants of their liberties without due process of law, unless this court will give them relief.

Of course, such a wrong by the judiciary is as much an act of the State, and comes within the prohibition of the Fourteenth

Amendment, as if it had been done by the legislative branch of the government.

That the wrong was not done by the statute, but by the erroneous decision of the State Supreme Court, in declaring that our liberties were not involved in the judgment of the lower court, can be seen by an examination of the statute and the decision of the State Supreme Court.

The right to a writ of error from the State Supreme Court to the judgment of the lower court, notwithstanding the State Statute, refusing such writ in certain proceedings, could not have been raised in the original pleadings. It could only have been raised for the first time in the petition for the writ addressed to the State Supreme Court.

In that petition it was insisted that the statute did not apply to cases like the one at bar. See record, pages 14 to 18. It was there also contended that, if it did apply to a case like the one at bar, as to cases where the appellants' liberties were involved, then the statute was void, because, by virtue of the State Constitution, the State Supreme Court was given appellate jurisdiction in "all cases involving the life or liberty of any person."

Such question having been raised and submitted in that petition, the judge, to whom it was submitted, granted the writ.

When it came before the full court for its final decision, what did it in effect decide? Not that we were wrong in our contention that the statute was void, where it came in conflict with the provision of the State Constitution, but it virtually held that we were right in claiming that that statute could not deprive it of jurisdiction as to any person, whose liberty was involved, because that language of the State Constitution "applies to every judgment involving the life or liberty of any person." It, therefore, affirmed our position that the statute was void as to every judgment involving the life or liberty of any person. Hence, if the appellants' liberties were involved, that statute did not prevent that court from granting the writ of error, and, therefore, the statute could not and would not deprive the appellants of the due

process, claimed by way of a writ of error, if the liberties of the appellants were involved. But, having so held, it then declared that, as a matter of fact, their liberties were not involved and for that reason dismissed the writ of error previously granted. By that dismissal of the writ of error, **based upon that reason,** we insist, the appellants have been deprived of their liberties without due process of law.

It is manifest, therefore, that it was not the statute which defeated their right to the writ of error, or the due process claimed, but it was the erroneous decision of the State Supreme Court, that their liberties were not involved. It is, therefore, evident that no question could have been raised as to that holding, whereby their due process was defeated, until that declaration or opinion had been announced. Hence, the question here at issue, whether the appellants were deprived by that decision of their liberties without due process of law, **was necessarily then and there born of that decision.** No such question had previously existed, and hence, could not have been previously raised. As soon as it was announced, a petition for a re-hearing containing an extended argument and full assignments of error, was submitted to the State court. See pages 79 to 86.

As was said in **Chicago, etc. Rd. v. Chicago,** 166 U. S., 226-236, the court might

> "give the parties interested the fullest opportunity to be heard, and yet it might be that its final action would be inconsistent with that amendment."

Here the wrong was done, the due process was refused, not by the statute, but by the "final action" of the court, in holding that the appellants' liberties were not involved.

That it was the decision of the State Supreme Court, and not the statute, which caused the wrong of which we here complain, can be readily seen by considering what would have been the court's decision, had there been no statute upon the question of a writ of error in contempt cases.

The court would have said our jurisdiction is derived either from statutes or from the State Constitution. There is no statute giving us jurisdiction in such a case, and unless we are given it by the State Constitution, we have no jurisdiction.

Looking to that Constitution, it would have said: we find that we are given jurisdiction in "every case involving the life or liberty of any person.' But we have no jurisdiction in this case, because, the appellants' liberties are not involved.

Hence, with or without the existence of the said statute, the State Supreme Court's decision would have been the same, and, by the same erroneous view of "liberty," it would have deprived the appellants of their liberties without due process of law.

Manifestly, it is of the court's "final action," that we have a right to insist, that it violates the protection given by the Fourteenth Amendment.

If it be true, as above stated, that the "final action" of a State court may be violative of the Fourteenth Amendment, although a proper hearing had been previously granted, it must follow that that "final action" will be in itself a ground for an appeal to this court for relief. Otherwise such final action could defeat that Amendment.

As stated above, as soon as that wrongful "final action," which could not possibly have been anticipated, was done, a petition containing full assignments of errors, pointing out the error of this "final action," and fully arguing the propositions, was submitted. As declared in the record, it was refused "on mature consideration." Page 87.

But it is contended, on page 22 of the appellant's brief, that, unless a written opinion was filed the assignment was made too late.

Our reply to that contention is:

First: We submit that the mere absence of a "written opinion" cannot be regarded as absolutely conclusive, where the record shows, that the question was not only specifically raised, but fully argued, and that it was "on mature consideration" overruled.

The difference in mode of procedure cannot be of such radical importance. What this court requires, we submit, is that it shall clearly appear that the State court overruled the Federal question, and for that reason refused the re-hearing. That result clearly appears from the record in this case. See

Howard v. Kentucky, 200 U. S., 164;
Schlemmer v. Buffalo, etc., Ry. Co., 205, on page 11;
Leigh v. Green, 193 U. S., 79;
Green Bay, etc., Co. v. Paper Co., 172 U. S., 66-67;
Mallett v. North Carolina, 181 U. S., on page 592.

It is true that in the last cited case there was an opinion of the State court. But we submit that what this court was influenced by, was not the length or the formality of an opinion, but whether upon the petition for re-hearing the court dismissed the petition "without considering" the questions, or whether it refused the petition after considering them.

In this case while there was no formal opinion filed, yet the record shows that the questions were fully considered by the court before the petition was refused.

When the petition, containing an extended argument, was filed, an order was entered in which it was stated, "but, because the court here is not yet advised of its judgment to be given in the premises, time is taken to consider thereof." Page 87.

Subsequently the court entered the order refusing the re-hearing in the following words:

> "**On mature consideration** of the petition of the plaintiffs in error to set aside the judgment entered herein on the sixteenth day of January, 1908, and to grant a re-hearing of said cause, the prayer of said petition is denied."

Such language shows that it was not a mere refusal, but a conclusion come to after mature consideration of the question presented. It was, therefore, a judgment of that court

upon said question, and should be as effective as an extended opinion, setting forth reasons for the judgment.

In **Meyer v. Richmond,** 172 U. S., 92, this court, noticing the refusal of a writ of error, where the record raised a Federal question, says:

> "The court of appeals rejects the petition. Its order recited, . . . 'that having maturely considered, and the transcript of the record of the judgment aforesaid seen and inspected, the court, being of opinion that such judgment is plainly right, doth reject said petition.'
>
> "Necessarily, therefore, the Supreme Court of Appeals did, as the court of the city of Richmond did, consider the right which the plaintiffs claimed under the Constitution of the United States, and denied their rights."

Second: The cases cited by the appellee refer to questions which could have been raised before final decree. Here it was the final decree or "final action," which itself denied the due process of law, upon a question which did not arise, and could not have arisen, **until the rendition of the opinion.** It was the "final action," which raised for the first time the question, whether the appellants' liberties were involved, which erroneously held that they were not, and which, because of that error, deprived the appellants of the due process of law afforded by a writ of error.

Hence, it is evident that this Federal question was raised at the earliest possible moment, and, therefore, at the proper time.

Upon page thirteen of its brief, the appellee contends that the cases, cited on page twenty-one of our opening brief, were **habeas corpus** cases where the parties had been fined and committed until they paid the fines. They were cited to show that this court had never regarded the failure to pay the fine in such a case to be the fault of the one adjudged to be in contempt, nor regarded his imprisonment as brought on himself, because of their refusal to pay said fines.

It is claimed that those cases are not analogous to the one at bar, for the reason that in those cases the orders commanded an immediate commitment, and did not, as here, allow a time in which to pay them.

We submit that the distinction is more ingenious than sound. In the first place, we know that practically there is always some period of time between the rendition of the judgment in the contempt case and the actual arrest of the party. In each case the party can by an immediate payment anticipate and prevent an arrest. It is only where the party refuses to pay the fine that he is put under arrest.

If the State court was right in its conclusion that the appellants' liberties were not involved **in the judgment** of the Chancery Court, the logical result would be that their liberties were not involved **in the judgment,** even after an arrest but that the confinement had been brought about by the action of the parties themselves—their voluntary refusal to pay the fines imposed. We submit that such a conclusion could not be sound. The appellants' liberties were involved in the judgment, as were those of the parties in the **habeas corpus** cases cited by us.

The appellee in its brief also attempts to justify the decision of the State Supreme Court, upon the ground that the proceeding in this case was to a civil, and not as to a criminal contempt.

It is immaterial whether it is a criminal or a civil contempt, if one's liberty is involved. Wherever liberty is involved the right to a writ of error from the State Supreme Court lies, for the language of the State Constitution "applies to **every** judgment involving the life or liberty of any person." Nor did the State Supreme Court base its opinion upon any such ground. The earlier case of the **Balt. & Ohio R'y Co. v. City of Wheeling,** 12 Gratt., 40, cited in our opening brief, page 11, shows that the judgment in this case is in a criminal contempt proceeding. In that case, a hearing was refused upon the ground, that it should have been brought to the Court of Ap-

peals by a writ of error, and not by an appeal, as it was in the nature of a criminal proceeding.

A quotation from the case of **Bessette v. W. B. Conkey Co**, 194 U. S., 324-328, preceding the quotation made by the appellee in its brief, will demonstrate that the judgment in this case was to maintain the power and vindicate the dignity of the court, and not for the personal benefit of the appellee, and was a criminal contempt.

> "Proceedings for contempts are of two classes, those prosecuted to preserve the power and vindicate the dignity of the courts and to punish the disobedience of their orders, and those instituted to preserve and enforce the rights of private parties to suits and to compel obedience to orders and decrees made to enforce the rights and administer the remedies to which the court has found them entitled. The former are criminal and primitive in their nature, and the government, the courts and the people are interested in their prosecution. The latter are civil, remedial and coercive in their nature," etc.

Here while the appellee may indirectly be benefited by the judgment, yet it required nothing to be done by the appellants for the appellee. The judgment was a fine and commitment, if fine should not be paid. The fine went to the Commonwealth.

The distinction between civil and criminal contempt is very clearly stated in **Snow v. Snow,** 43 Pac., 620-21-23, where it is said:

> "Where the contempt is such that it results in a violation of the rights of the public or the rights of an individual, which have been adjudicated and fixed by the court, and a punishment is imposed in the interest of public justice, and not in the interest of any individual litigant as a money indemnity, the offense is necessarily of a public or criminal nature, and is clearly covered and

made punishable by our statutes as a public offense and the proceeds, when collected, go into the public treasury, and not for the benefit of the party injured.

"If the contempt consists in the refusal of a party to do something for the benefit or advantage of the opposite party, which is ordered to be done, the process is civil, and he stands committed until he complies with the order. The order in such case is not punitive, but coercive.

"If on the other hand the contempt consists in the doing of a forbidden act injurious to the opposite party, the process is criminal and conviction is followed by a penalty of fine and imprisonment, or both, which is purely punitive. In the former case the private party alone is interested in the enforcement of the order; and the moment he is satisfied, the imprisonment terminates. In the latter case the State alone is interested in the enforcement of the penalty.

"It is true the private party received an incidental advantage from the infliction of the penalty, but it is the same sort of advantage precisely, which accrues to the prosecution witness in a case of assault and battery, the advantage being that the punishment operates **in terrorem**, and by that means has a tendency to prevent a repetition of the offense."

In that case are cited 125 Ill., 307; 37 N. E., 1004; 49 Me., 392; 24 W. Va., 279; 114 Mass., 238; 30 N. E., 1038.

This distinction is clearly recognized **in re Christensen, Eng. Co.**, 194 U. S., 458 reaffirming **Bessette v. W. B. Conkey Company**, 194 U. S., 324, where of error was allowed.

But as we have said above, this question in Virginia has been put at rest by the case of **Balt. & Ohio R. v. City of Wheeling, supra**.

The appellee further contends in its brief, page 20-21, that the appellants have not been denied the equal protection of the laws, as existing in Virginia. In support of this position it cites **Tinsley v. Anderson**, 171 U. S., 101.

By a reference to pages 31 and 32 of our opening brief, it will be seen that we have not denied the principle upon which the Tinsley case was decided. But we also insist that by such a reference it will be seen that we drew a clear distinction between that line of cases and this proceeding.

That case decided that where the Legislature exercises properly its right to classify, and in such classification declares a law applicable to other persons "under similar circumstances and conditions," that then equal protection of the laws is given.

It is evident that that result came from two causes: first, power of the Legislature to so classify, and, secondly, from a just exercise of that power.

But we there submitted, and here again, respectfully insist, that that rule cannot apply, where the Legislature is prohibited by the State Constitution, the highest law of a State, from such classification, by a declaration in that Constitution that "every person," meeting a certain test, should be entitled to a certain protection.

In the Tinsley case the Legislature of Texas was not hampered by any Constitutional restriction upon its power to classify in the matter at issue. But here the Virginia Constitution, as construed by the State Supreme Court, declares that "every person" shall be entitled to a writ of error if his life or liberty is involved. That right so declared being the due process of law of that State as to "every person," meeting the test so declared, the Legislature had no power to prohibit by statute anyone or more of the persons covered by such test from enjoying that protection. By the State Constitution it is declared that the persons so entitled to that protection "under similar circumstances and conditions," are those whose life or liberty is involved. Therefore, by the State Constitution, the highest law of that State, and necessarily, **quoad hoc**, the due process of law of that State, the only similarity of "circumstances and conditions" required is that life or liberty be involved. Therefore, should a Legislature refuse that test, and declare some other similarity of "circumstances and conditions," such as fines for contempt, fines for misdemeanors,

or any other classification, shall determine, whether a party shall have a writ of error, although his life or liberty be involved, it would necessarily be denying the equal protection of the laws to those persons, who would be denied that protection, to which "every person" is entitled by the State Constitution, whose liberties were involved.

This, we submit, is the clear distinction between **Tinsley** v. **Anderson, supra,** and the case at bar.

We respectfully submit that the appellants are entitled to the relief we have heretofore prayed of this honorable court.

C. V. MEREDITH.
PRESTON COCKE.
E. B. KING.
SMITH W. BENNETT.
Counsel for appellants.

No. 104.

IN THE

Supreme Court of Appeals of the United States

OCTOBER TERM, 1909

[redacted]

J. W. FORBES, THOMAS TATUM OSBORNE, JOHN T. COX, ET AL, *Plaintiff in Error,*

vs.

THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER, UNITED AMERICAN MECHANICS, OF THE STATE OF VIRGINIA.

BRIEF FOR DEFENDANT IN ERROR.

IN THE

Supreme Court of Appeals of the United States

OCTOBER TERM, 1909

No. 322

J. W. FOBES, THOMAS TATUM OSBORNE, JOHN T. COX, ET AL, *Plaintiff in Error,*

vs.

THE STATE COUNCIL OF VIRGINIA, JUNIOR ORDER, UNITED AMERICAN MECHANICS, OF THE STATE OF VIRGINIA.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This case is a sequel to the case of *The National Council Junior Order United American Mechanics of North America et als. v. The State Council of Virginia Junior Order United*

American Mechanics of the State of Virginia, reported in 203 U. S., p. 151.

From the opinion and record in that case and also from the record in the present case, it appears that the defendant in error, the State Council, is a Virginia corporation, and the National Council a Pennsylvania corporation.

In that case this court says (see p. 158): "The plaintiff (i. e. the State Council appellee in the present case) is a Virginia corporation. The principal defendant (i. e. the National Council) is a Pennsylvania corporation.

The latter was incorporated in 1893, the articles of association reciting that the associates comprise the National Council, the supreme head of the Order in the United States (where it previously had existed as a voluntary association). Its objects were to promote the interests of Americans and shield them from foreign competition, to assist them in obtaining employment, to encourage them in business, to establish a sick and funeral fund, and to maintain the public school system, prevent sectarian interference with the same, and uphold the reading of the Holy Bible in the schools.

As the result of internal dissensions, the Virginia Corporation (the State Council) was chartered in 1900 (February 17th) with closely similar objects, omitting those relating to the public schools. It seems to have consisted of the dominant portion of a former voluntary State Council of the same name, from which a charter issued by the Pennsylvania corporation (the National Council) had been withdrawn. The act of incorporation declared that the new body shall be the supreme head of the Junior Order of the United American Mechanics in the State of Virginia, and provides that it shall have full and exclusive authority to grant charters to subordinate councils Junior Order United American Mechanics in the State of Vir-

ginia, with power to revoke the same for cause. The plaintiff (i. e. the State Council) and the voluntary association of the defendants, both have granted and intend to grant charters to subordinate councils in Virginia, and are obtaining members and fees, which each would obtain but for the other, and are holding themselves out as the only true and lawful State Council of the Virginia Junior Order of United American Mechanics. The plaintiff sued for an injunction, and the defendants in their answer asked for cross relief. The plaintiff (i. e. the State Council and appellee in the present case) obtained a decree enjoining the defendant corporation, and the other defendants (declared to be shown by their answers to be its agents and representatives) as officers of the Virginia voluntary association, from continuing within the State the use of the plaintiff's name or any other name likely to be taken for it; from using the plaintiff's seal; from carrying out under such name the objects for which the plaintiff and the Virginia voluntary association were organized; from granting charters to subordinate councils in the State as the head of the Order in the State; from interferring in any way with the pursuit of its objects by the plaintiff within the State; and from designating their officers within the State by appellations set forth as used by the plaintiff.

On appeal, the decree was affirmed, with a modification, merely by way of caution, providing that nothing therein contained should, in any wise interfere with any personal or property rights that might have accrued before the date of the Virginia charter. The defendants had set up in their answer and insisted that the charter impaired the obligation of the contract existing between the plaintiff and the principal defendant contrary to Article 1, Section 10 of the Constitution, and also violated Section 1 of the Fourteenth Amendment, and they took a writ of error from this court."

The foregoing facts are shown by the record in the present case, but for the purpose of clearness and conciseness, they have been stated in the language of this court. The decree of the Chancery Court of the city of Richmond in the aforesaid case of the *State Council of Virginia Junior Order United American Mechanics of the State of Virginia* v. *The National Council of the Junior United American Mechanics* was affirmed by the Supreme Court of Appeals of Virginia. On an appeal from that court to this court it was held, in the opinion of this court, from which we have quoted, that as to the constitutionality of the State Council's charter, the Supreme Court of Appeals of Virginia was right, and its decree was affirmed.

The appellants in the present case were parties, defendant, to that suit (Rec. pp. 40-41), and by the decree of the Chancery Court rendered on the 21st of July, 1904, affirmed by the Supreme Court of Appeals of Virginia, and also by this court, they were perpetually enjoined from doing any of the aforesaid acts.

Subsequent proceedings will be stated in the language of the opinion of the Supreme Court of Appeals of Virginia in the present case. Judge Keith delivering the opinion, says (see *Forbes* v. *State Council*, 107 Va. p. 854):

"The Chancery Court for the city of Richmond, in a case therein pending, styled *State Council of Virginia, Junior Order United American Mechanics of the State of Virginia* v. *National Council Junior Order United American Mechanics of the United States of North America, and others*, upon the petition of the plaintiffs (the State Council) issued a rule on the 20th day of February, 1907, against J. W. Forbes and others (appellants), summoning them to appear before that court on the 13th of March, 1907, to show cause why they should not be fined and imprisoned "for a contempt of this court in disobeying, disre-

garding and evading the decree of this court rendered on the 21st day of July, 1904, as affirmed by the Supreme Court of Appeals of Virginia and the Supreme Court of the United States."

"This rule was continued from time to time, until the 8th day of May, 1907, and on that day came the defendants named in said petition and rule, except W. W. Sawyer, as to whom said rule had been theretofore dismissed; and the matter being fully heard, upon the petition, the rule, the answer of the several defendants, and upon certain affidavits and the various orders and decrees of this court, it was adjudged that the parties were in contempt of court in disobeying its decree; and thereupon the Chancery Court of the city of Richmond, "desiring to compel obedience to said decree, doth adjudge, order, and decree that the persons above named, against whom the rule was issued, be, and they are hereby fined, the sum of $20.00 each; and the same shall be paid by them respectively to the clerk of this court within 35 days from this date; and in default of such payments each of said persons shall stand committed to the custody of the sheriff of this city, to remain in jail until said sums be paid by them respectively.

"To that order a writ of error and supersedeas was awarded by this court. * * *

We are of opinion that this court has no jurisdiction to review the judgment complained of, and the writ of error is therefore dismissed."

The decree of the Supreme Court of Appeals of Virginia dismissing the writ of error is found on p. 78 of the record.

Appellants presented to said court a petition for a rehearing, which, "on mature consideration," was denied (p. 87). A writ of error was then taken by appellants from this court.

Such are the material facts as shown by the record, which are presented for the consideration of this court.

ASSIGNMENTS OF ERROR AND REPLY TO BRIEF FOR APPELLANTS.

As we understand the assignments of error and the brief of the learned opposing counsel, their contention is in substance as follows:

(1) The 88th section of the Virginia Constitution says that the Supreme Court of Appeals of Virginia "shall, by virtue of this Constitution, have appellate jurisdiction in all cases * * * involving the life or liberty of any person."

Although said court was of the opinion, and so decided, that the present case does not involve the liberty of appellants, yet the fact is that it does involve their liberty, and the effect of the decision of said court in declining to take jurisdiction is to deprive appellants of their liberty, without due process of law, and deny them the equal protection of the laws.

(2) The Virginia Legislature in enacting Section 4053 of the Code undertook to deny appellants due process of law and the equal protection of the laws. Said section reads as follows: "To a judgment for contempt of court, other than for the non-performance of, or disobedience to, a judgment, decree, or order, a writ of error shall lie to the Supreme Court of Appeals."

In its opinion the Supreme Court of Appeals of Virginia says:

"We are met at the threshold of the case by a motion to dismiss the writ of error as having been improvidently awarded, the contention on the part of the State Council Junior Order of United American Mechanics of Virginia being that for a contempt, which consists of disobedience of a lawful decree of a court by a party to the suit, in which the decree was rendered, no writ of error lies from this court. This court is one of limited jurisdiction, and the burden is upon him who invokes its an-

thority to establish its jurisdiction over the matter in controversy (citing *Harman* v. *City of Lynchburg*, 33 Gratt. 37). Laborious investigation into the sources of the common law would shed but a feeble light upon the subject under discussion. To the law then as it is written we shall turn for a solution of the questions before us."

The learned president of the Supreme Court of Appeals of Virginia, having reached the conclusion that under Sec. 4053 of the Code no writ of error was allowable to the judgment of the Chancery Court of the city of Richmond, proceeds in his opinion as follows, on p. 858, 107 Va.:

"Another contention is made by the plaintiffs in error, which rests upon the language of the constitution of 1902. Article 6, Section 88, in reference to the jurisdiction of this court, says in part: 'Subject to such reasonable rules, as may be prescribed by law, as to the course of appeal, the limitation as to time, the security required, if any, the granting or refusing of appeals, and the procedure therein, it shall, by virtue of this constitution, have appellate jurisdiction in all cases involving the constitutionality of a law as being repugnant to the Constitution of this State, or of the United States, or involving the liberty of any person.'"

"Conceding for the purposes of this case that the constitution operates *ex proprio vigore*, without legislative action, to confer jurisdiction on this court in all cases involving the life or liberty of any person, we think the *language of the Constitution falls short of maintaining the position of plaintiffs in error.* The judgment complained of does not deprive them of life or liberty. It imposes a fine, and they are given a reasonable time (35 days, pp. 72-4) within which to pay it; and it is only in the event of their failure or refusal to pay it that they are to be committed to jail. The imprisonment then would be, not the direct result

of the judgment of the court, which by its terms imposes a fine upon the plaintiffs in error, for their disobedience to a lawful decree of the court. *The language of the Constitution is not broad enough to cover the case before us.* It applies to every judgment involving the life or liberty of any person, but *by force of the very terms employed* excludes from its operation, judgments which do not by their own terms involve life or liberty."

It will be seen from the words which we have italicized that the Supreme Court of Appeals of Virginia undertook to *construe* the language of the Virginia Constitution.

In *Bank of Hamilton* v. *Lessee of Dudley*, 2 Peters, 492, Chief Justice Marshall says on p. 524: "It is also contended that the jurisdiction of the Court of Common Pleas in testamentary matters, is established by the Constitution, and that the exclusive power of the States to construe legislative acts does not extend to the paramount law so as to enable them to give efficacy to an act which is contrary to the Constitution. We cannot admit this distinction. The judicial department of every government is the rightful expositor of its laws; *and emphatically of its supreme laws.*" (Italics mine.)

In *Callan* v. *Bransford*, 139 U. S. 197, Chief Justice Fuller said: "The writ of error in the one case and the appeals in the three others were dismissed by the Court of Appeals (the Supreme Court of Appeals of Virginia), upon the ground that the amount in controversy in each case was less than sufficient to give the court jurisdiction, under the Constitution of the State. This being so, we are of the opinion that the writs of error to that court must be dismissed, and it will be so ordered."

Whether or not the matters involved were purely pecuniary and the amount in controversy less than sufficient to give the court jurisdiction under the Virginia Constitution, we submit

were "questions of fact"; yet, as the Supreme Court of Appeals of Virginia declined to take jurisdiction on the ground that the amount in controversy was pecuniary and not sufficient under the Virginia Constitution to give it jurisdiction, this court for *that reason* dismissed the writs of error to that court.

In the case under argument the Supreme Court of Appeals of Virginia declined to take jurisdiction, on the ground that the liberty of appellants was not involved, and it is respectfully submitted that this court, for that reason, will dismiss the writ of error to that court.

In *West* v. *Louisiana*, 194 U. S., p. 258, the plaintiff in error had been convicted of larceny and sentenced to three years' imprisonment, which conviction was affirmed by the Supreme Court of Louisiana. The Constitution of Louisiana provided that in all criminal prosecutions "the accused, in every instance, shall have the right to be confronted with the witnesses against him." A deposition was read in evidence on his trial, and "the evidence contained in the deposition was material." On a writ of error from this court to the Supreme Court of Louisiana it was contended that the "State court in permitting the deposition to be read, not only violated the State law, but the Fourteenth Amendment, by refusing to the plaintiffs due process of law."

This court said at page 261: "Whether the State court erred in its construction of the State Constitution and statutes and the common law on the subject of reading depositions of witnesses, is not a Federal question. We are bound by the construction which the State court gives to its own constitution and statutes, and to the law which may obtain in the State, under circumstances such as those existing herein. As to the Federal Constitution, it will be observed that there is no specific provision therein which makes it necessary in a State court that the defendant should be confronted with the witnesses against him in crim-

inal trials. The sixth amendment does not apply to proceedings in State courts."

As there is no provision in the Federal Constitution that the Supreme Court of a State shall have jurisdiction of a case involving the life or liberty of a person, we submit that the foregoing authorities are conclusive in favor of the appellee in the present case. See also in this connection the following cases:

McBride v. *Hoey*, 11 Pet. 167. *Nesmith* v. *Sheldon*, 7 How. (U. S.) 812. *Adams* v. *Preston*, 22 How. 473. *Congdon* v. *Goodman*, 2 Black 574. *Nichol* v. *Levy*, 5 Wall. 433; *Phoenix Ins. Co.* v. *The Treasurer*, 11 Wall. 204; *Smith* v. *Adsit*, 16 Wall. 185; *Watts* v. *Washington*, 91 U. S. 580; *Gohmley* v. *Clark*, 134 U. S. 338; *Morley* v. *Lake Shore Ry. Co.*, 146 U. S. 162; *Hooker* v. *Los Angeles*, 188 U. S. 314-320; *Finney* v. *Guy*, 189 U. S. 335.

It will be seen from its opinion that the Supreme Court of Appeals of Virginia *construed* the language of the Virginia Constitution—that is, the phrase "involving the liberty of a person," as not broad enough to cover a situation where a fine had been imposed upon a person for a contempt of court; where a reasonable time had been given to pay his fine; and there had been no refusal or failure on his part to pay it. The learned counsel for appellants contend in their brief on p. 19 that "the construction put by the State Supreme Court upon the words 'involving liberty' contradicts several well-known principles of law." We respectfully submit that the construction put by the Supreme Court of Appeals of Virginia upon those words *as used in the Virginia Constitution*, whether right or wrong, will not be altered by this court and a different effect given to them from that which has been given to them by that court. In the language of Chief Justice Marshall, in the case of *The Bank of Hamilton* v. *Lessee of Dudley*, 2 Pet. 492, we respectfully submit that "The

judicial department of every government is the rightful expositor of its laws, and *emphatically of its supreme laws.*" (Italics mine.) Whatever meaning may be given to the word "involve" in the Dictionaries cited by opposing counsel, it is certain that under the *Virginia Constitution*, as *construed* by the Virginia Court of Appeals, a judgment "involving the liberty of a person" must not indirectly, but directly, involve his liberty, and there is nothing to the contrary in the Federal Constitution or any Federal statute. As to the word "liberty," it is clear that it is not one of those words which, like horse, or diamond, can have but one meaning, in whatever connection or context it may be found.

According to Webster's International Dictionary, it may mean "freedom from imprisonment," or "privilege conferred by a superior person," or "a privilege, exemption, franchise, immunity, enjoyed by privilege or grant," or a privilege or license in violation of the laws of etiquette or propriety, as to permit or take a liberty; or "the power of choice," etc.

A person against whom an injunction is awarded in any case is, in a certain sense, deprived of his liberty. The degrees of liberty may vary between the extremes of going where one pleases within the walls of a prison and going where he pleases *outside* of them, his liberty of entering within them being restricted.

Very moderate fines for a contempt of court were imposed upon appellants, and they were given a reasonable time (35 days) within which to pay them. That time had not expired, and they had neither failed nor refused to pay their fines, when they applied to the Virginia Supreme Court for a writ of error. They were at full liberty to go where they chose and to do what they thought best for their interest. They could pay or not pay as they saw proper the very moderate fines which had been imposed upon them, for the purpose as the Chancery Court recited, of compelling obedience to its decree. They were in no

situation to apply to any court for a writ of *habeas corpus.*

After the judgment of the Chancery Court was rendered, appellants were in the full enjoyment of their liberties, in the sense that they were in the custody of no one, and could go where they wished, and do as they liked. Unless they failed or refused to pay the fines imposed upon them within the reasonable time allowed them, they would continue indefinitely to enjoy that liberty.

The Supreme Court of Apppeals of Virginia construed the phrase "involving the liberty of a person," a phrase not found in the Federal Constitution, but in the Virginia Constitution, as not applicable to a situation of that kind.

That court says in its opinion: "The language of the Constitution is not broad enough to cover the case before us."

The learned opposing counsel have labored hard in their brief to make it appear that the fines for a contempt were in the nature of a criminal prosecution. Let it be admitted for the purposes of this argument only that the contempt proceeding was a criminal prosecution, and we reply in the language of the decree of the Chancery Court that the fines were imposed to "compel obedience" to its decree (p. 74); that section 4053 of the Code does not allow an appeal to the Supreme Court of Appeals of Virginia in such cases; and that the Federal Constitution does not require the Supreme Court of Appeals of Virginia to take jurisdiction of criminal prosecutions.

Let it be admitted for the purposes of this argument that said judgment was rendered in a criminal case, yet ye deny that the judgment "involved their liberty," in the sense in which that expression, as construed by the Virginia Court of Appeals, is used in the *Virginia Constitution.* Unless appellants can make it appear that they were in a situation to apply for a writ of *habeas corpus,* at the time when they applied for a writ of error

to the Supreme Court of Appeals of Virginia, we submit that not one of the *habeas corpus* cases cited in their brief has any sort of application or pertinency to the present case. In those cases the persons applying for the writ were in prison, either actually or constructively.

In *ex parte Curtis*, 106 U. S. 371, the party was convicted of a misdemeanor. "Upon his conviction he was sentenced to pay a fine and stand committed until payment was made." In that case his commitment was the "direct result" of the judgment of the court. He was, by the judgment, at once committed to custody until his fine be paid. The same was true in *ex parte Rowland*, 104 U. S. 604; *ex parte Fisk*, 113 U. S. 713, and in *re Ayres*, 123 U. S. 443.

In the present case appellants, by the judgment of the Chancery Court, were left at full liberty to go where they chose and do what they chose, and would continue in the full possession of their liberty, unless within the reasonable time allowed them they refused or failed to pay the fines imposed upon them. . It was not a "case involving the liberty of a person," within the meaning of that language as construed by the Supreme Court of Appeals of Virginia. While in our opinion the distinction is not material, yet we respectfully submit that the contempt in the present case will be considered by this court as a *civil* and not a *criminal contempt*. In *Bessette* v. *W. B. Conkey Co.*, 194 U. S. 324, cited in the brief of opposing counsel, the W. B. Conkey Co. had brought an injunction suit to restrain defendants from interfering with the operation of its printing house. An injunction was granted. Afterwards the plaintiff filed in the suit its petition, verified by affidavit, setting out that one Bessette, who was not a party to the injunction suit, had disobeyed the injunction, with knowledge of the injunction order.

This court says, on p. 327, speaking of the distinction between

criminal and civil contempts, "Manifestly if one inside of a court room disturbs the order of proceeding or is guilty of personal misconduct in the presence of the court, such action may properly be regarded as a contempt of court, yet it is not misconduct in which any individual suitor is especially interested. It is more like an ordinary crime, which affects the public at large, and the criminal nature of the case is the dominant feature. On the other hand, if in the progress of the suit, a party is ordered by the court to abstain from some action which is injurious to the rights of the adverse party, and he disobeys the order, he may also be guilty of contempt; but the personal injury to the party in whose favor the court has made the order gives a remedial character to the contempt proceedings. The punishment is to secure to the adverse party the right which the court has awarded him. It may not be always easy to classify a particular act as belonging to either one of these two classes. It may partake of the characteristics of both. *A significant and generally determinative feature is* that the act is by one, party to the suit, in disobedience of a special order made in behalf of the other. * * * In the case at bar the controversy between the parties to the suit was settled by a final decree, and from that decree, so far as appears, no appeal was taken. An appeal from it would not have brought up the proceedings against the petitioner, for he was not a party to the suit. Yet, being no party to the suit, he was found guilty of an act in resistance to an order of the court. His case, therefore, comes more fully within the *punitive* than the remedial class. It should be regarded like misconduct in a court room or disobedience of a subpoena, or among those acts primarily directed against the power of the court." (Italics mine.)

"That significant and generally determinative feature" was absent in that case, which had it been present as it is in the

case now under discussion, would have made this court classify the contempt as a civil contempt. In the present case the appellants were parties to the suit in which the decree of July 21st, 1904, was rendered. The State Council of Virginia, incorporated by the Act of February 17th, 1900, filed a petition in the nature of a bill in equity in the Chancery Court. Said petition contains a special prayer that defendants may be compelled to abide by and perform said decree in all respects, and that such other, further and general relief may be granted petitioner, as the nature of its case requires, and to equity may seem meet (pp. 35-41). It is, therefore, respectfully submitted that, judged by the foregoing test, the judgment of the Chancery Court will not be considered by this court as a judgment in a criminal case. In *Balt. & Ohio R. R. Co.* v. *Wheeling*, 13 Gratt., cited by opposing counsel, the court said at p. 57: "A contempt of court is in the nature of a criminal offense, and the proceeding for its punishment is in the nature of a criminal proceeding. The judgment in such a proceeding can be reviewed by a superior tribunal, *only* by a writ of error, and not *always* in that way." The words which we have italicized clearly show that it was not every judgment in a contempt proceeding in Virginia which could be reviewed by a superior tribunal.

But it is respectfully submitted that it is not at all necessary to advert to any distinction between civil and criminal contempts to satisfy this court that the Supreme Court of Appeals of Virginia had no jurisdiction to review the judgment of the Chancery Court.

Whether the judgment be a civil or a criminal proceeding, the Supreme Court of Appeals of Virginia in construing the language of section 4053 of the Code of Virginia and section 88 of the Virginia Constitution, held that it had no jurisdiction of this controversy; nor does the Federal Constitution or any Federal

statute give it jurisdiction. In the light of the numerous authorities already cited, we submit that this court will adopt the construction given by the Virginia Supreme Court to the Virginia Constitution and a Virginia statute, which construction is not in contravention of the Federal Constitution or any Federal statute.

For the purposes of this argument, it may be admitted that liberty in its widest possible sense, and of every possible degree and kind, was contemplated by the Fourteenth Amendment to the United States Constitution, when it says that "No State shall deprive any person of life, liberty, or property, without due process of law."

We reply that if the judgment of the Chancery Court deprived appellants of their liberty, giving to that word its widest meaning, it was done by due process of law. They were served with notice, appeared and filed their answer, and made a full defense before that court.

But the Supreme Court of Appeals of Virginia has placed its own construction upon the expression "involving the liberty of a person" as used in the Virginia Constitution, and after full argument has held that it is not broad enough to give that court jurisdiction, and that decision of the Virginia Supreme Court does no violence either to the Federal Constitution or any Federal statute.

We submit, in the light of the foregoing authorities, that the construction given by the Supreme Court of Appeals of Virginia to the Virginia Constitution, whether right or wrong, is conclusive upon this court.

In the assignment of errors on page 89 of the record it is contended that the Supreme Court of Appeals of Virginia erred in holding and deciding that as a *fact* the judgment of the Chancery Court did not deprive appellants of their liberties, and

that their liberties were not involved in said judgment. On page 24 of the brief of opposing counsel it is said: "It will not be contended that this court is bound by the decision of the State Supreme Court upon the question whether the appellants' liberties were involved. For that decision was upon a *question of fact* as to what is liberty." The Supreme Court of Appeals of Virginia quoted from the Virginia Constitution, construed its language, and decided that it did not apply to the situation of appellants, after the judgment of the Chancery Court was rendered.

But, for the purposes of this argument, it may be admitted that the "decision was upon a question of fact, as to what is liberty," and we respectfully submit that the law is against the contention of the learned counsel for appellants.

In *Newport Light Co.* v. *Newport*, 151 U. S. 151, cited by opposing counsel, on p. 4 of their brief, upon a writ of error from this court to the Court of Appeals of Kentucky, it was held that no Federal question was involved. At the request of the Newport Light Co., the president of the Kentucky Court of Appeals certified that a Federal question was involved in the decision. This court held that it was not bound by that *certificate*, but would "determine for itself whether the suit really involved any Federal question."

It did not decide that it would decline to accept as a fact what the Kentucky Court of Appeals had in its opinion and decision ascertained and adjudicated to be a fact. In *Railroad Co.* v. *Schmidt*, 177 U. S. 230, cited by opposing counsel, on p. 27 of their brief, the Louisville and Nashville R. R. Co., though not nominally a party to the suit, was nevertheless, upon the return of a rule issued against it, held liable for the payment of a judgment which had been recovered against another railroad company, which liability was upheld by the Court of Appeals of

Kentucky. Upon a writ of error from the Supreme Court of the United States to that court Mr. Justice White said: "The claim of the plaintiff in error (the Louisville and Nashville) is that the decree rendered against it did not constitute due process of law, first, because it had no notice of the suit, it not having been summoned as a party defendant; and, second, that as it was not made a nominal party defendant and served with process as such, it had no adequate opportunity to make defense. * * * But the answer to these contentions is that the necessary effect of the opinion and decree of the court of last resort of Kentucky is to hold, first, *as a matter of fact* that, although not a technical defendant, the Louisville and Nashville became voluntarily in the name of the Cincinnati and Lexington, the real, though not the nominal defendant in the cause. *The conclusions of fact found by the court of of last resort of Kentucky are not subject to re-examination by this court.*" . (Italics mine.)

In *Baldwin* v. *Kansas*, 129 U. S. 52, Baldwin was convicted of murder in a State court in Kansas, which conviction was affirmed by the Supreme Court of that State. Upon a writ of error from the Supreme Court of the United States, it was contended that the jury was not a legally constituted tribunal under the laws of the State of Kansas, and so the appellant would be deprived of his life, without due process of law. This court concludes its opinion in that case as follows: "The question whether the evidence in the case was sufficient to justify the verdict of the jury, and the question whether the *Constitution of the State of Kansas was complied with or not* in the proceedings on the trial which are challenged, are not Federal questions, which this court can review." (Italics mine.)

In *Adams* v. *Church*, 193 U. S. 510, this court says at p. 513: "The finding of facts made in the Supreme Court of Oregon is binding upon this court, and will be the basis of decision here."

The following is from the syllabus to *Mining Co.* v. *Boggs*, 3 Wall. 304: "Nor has the court jurisdiction, where the decision below is, that *as a matter of fact* (italics by the reporter), no such license exists; the courts of the State to whose highest court of law and equity, the writ of error is sent, having the power under the constitution of its State, to decide both law and fact, upon the submission of the case by the parties."

In the light of the foregoing authorities and others that might be cited, it is respectfully submitted that whether the Supreme Court of Appeals of Virginia be considered as construing the language of the Virginia Constitution as not broad enough, in the situation of appellants, to confer jurisdiction on that court, or whether it be considered as reaching an erroneous conclusion "upon a question of fact," in either alternative, the decision of that court will not be reversed. To reverse that decision would be in effect to direct the Virginia Supreme Court to take jurisdiction of a case of which neither the Federal Constitution nor any Federal statute requires it to take jurisdiction, and of which also in construing a Virginia statute (section 4053 of the Code) and the Virginia Constitution, that court upon full argument and mature consideration held that it had no jurisdiction.

In *Scott* v. *McNeal*, 154 U. S., which seems to be much relied on by opposing counsel, administration had been granted upon the estate of a *living person*, under the belief that he was dead. When he turned up alive and brought suit for his property he was not allowed by the State courts to recover it. This court, in its opinion, said on p. 45: "Upon a writ of error to review the judgment of the highest court of a State, upon the ground that the judgment was against a right claimed under the Constitution of the United States, this court is no more bound by that court's

construction of a statute of the Territory or State, when the question is whether the *statute provides for the notice required to constitute due process of law*, than when the question is whether the statute created a contract which has been impaired by a subsequent law of the State."

It is clear that if notice required by a statute is not such a notice as to constitute due process within the meaning of the United States Constitution the statute providing for such notice is void and of no effect. In that case it was the *validity* of a statute that was called in question. In the present case the *validity* of the Virginia Constitution is not questioned. On the contrary, appellants are invoking the language of the Virginia Constitution in their behalf, and are contending that the Supreme Court of Appeals of Virginia erroneously construed its language in holding that it was not broad enough to cover their case. (*See Balt. & Pot. R. R. Co.* v. *Hopkins*, 130 U. S., at pp.. 223-4.) The contention of opposing counsel on pages 29 and 30 of their brief, if we correctly understand it, is that section 4053 of the Code of Virginia deprives appellants of the due process of law "fixed and declared" by the language of the Virginia Constitution—that is to say, of the right to have the Virginia Court of Appeals take jurisdiction of their case.

The answer is that the Virginia Court of Appeals, in construing the language of the Virginia Constitution, has held that it "fixed and declared" no due process of law consisting of the jurisdiction of that tribunal in any case, for the purpose of hearing the complaints of people in their situation.

It is contended on page 31 and seq. of the brief of opposing counsel that "not only does the said statute (section 4053 of the Code) deprive the appellants of due process of law, but it attempts to deny to the appellants the equal protection of the laws, as existing in Virginia."

In *Tinsley* v. *Anderson*, 171 U. S. 101, Chief Justice Fuller says, on page 106: "Counsel asserts that the rights claimed under the Constitution of the United States were the right to due process of law and the right to the equal protection of the laws. The right to the equal protection of the laws was certainly not denied, for it is apparent that the same law or course of proceedure would have been applied to any other person in the State of Texas, under similar circumstances and conditions, and there is nothing in the record on which to base an inference to the contrary." This language is as pertinent as possible to the case under argument. There is absolutely nothing in the record on which to base an inference that the same law and course of procedure which have been applied to appellants, would not have been applied to any other persons in the State of Virginia, under similar circumstances and conditions.

THIS COURT HAS NO JURISDICTION.

We invite the attention of the court to the record in support of our contention that it presents no Federal question for the consideration of this court. On page 35 of the brief of counsel for appellants it is said: "As the wrong consisted in the act of refusal by the Supreme Court of the State, no Federal question, so far as the action of the court was concerned, could arise before the doing of that act, and hence no such Federal question, arising from that action could be presented in the record as originally presented to the State Supreme Court. * * * As soon as that court, by its refusal to hear the appellants deprived them of the due process of law and the equal protection of the laws, the appellants presented a petition and note of argument for a rehearing, and insisted therein that such action on the part of the court violated the said provisions of the Fourteenth Amend-

ment. (Record, pp. 79 to 86.) After "mature consideration" of said petition and printed argument, a rehearing was refused. Whereupon this appeal was taken to this court."

Hannis Taylor, on the jurisdiction of the U. S. Supreme Court, says on p. 448, section 244:

"A Federal question is raised too late, when suggested for the first time, in a petition for rehearing, after judgment in the highest court of a State, where such petition is denied without opinion," citing *Bushnell* v. *Crooks Mining & Smelting Co.*, 148 U. S., 690; *Pim* v. *St. Louis*, 165 U. S., 273; *Capital Nat. Bank* v. *First Nat. Bank*, 172 U. S., 425; *Turner* v. *Richardson*, 180 U. S. 87; *Johnson* v. *New York Life Ins. Co.*, 187 U. S., 491; *Weber* v. *Rogan*, 188 U. S., 10; *Mutual Life Ins. Co.* v. *McGrew*, 188 U. S., 291. The same author says on the same page: "Failure to raise a Federal question until after a case has been finally decided in the highest court of a State will preclude a writ of error to the Supreme Court," citing *Scudder* v. *Coler*, 175 U. S., 33. The authorities cited fully support the text.

In the light of the foregoing authorities it is respectfully submitted that the appellants in the petition for a writ of error to the Virginia Supreme Court should have specially raised the question and distinctly contended that in the event it declined jurisdiction the effect would be to deprive them of due process of law and the equal protection of the laws. (See *Capital Bank* v. *Cadiz*, 172, U. S., 172; *Meyer* v. *Richmond*, 172, U. S., 82); and that not having done so, they will not be heard before this court upon those points.

It is too late to make them for the first time in a petition for a rehearing.

On pages 18 and 19 of the record the validity of section 4053 of the Code was denied in the petition for a writ of error to the State Supreme Court, but not upon any Federal grounds.

The record shows that three bills of exception were taken by appellants to the rulings of the Chancery Court (pages 75 and 76), but none of them raise any Federal question. The answer of appellants to the petition of the State Council does not raise or suggest any Federal question, which is presented by the assignments of error or contended for in the brief of opposing counsel (pp. 54 to 65).

It is, therefore, respectfully submitted and requested that the writ of error from this court will be dismissed for want of jurisdiction.

Respectfully submitted,

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Counsel for Appellee.